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COURT OF APPEAL -- STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

PEOPLE OF THE STATE OF CALIFORNIA	FROM SAN DIEGO COUNTY
PLAINTIFF AND RESPONDENT,	HON. WILLIAM J. MCGRATH, JUDGE
VS.	
	APPEAL NO. D046320
JAMES CUNNINGHAM,	NO. SCE243538
DEFENDANT AND APPELLANT.	

REPORTER'S TRANSCRIPT ON APPEAL

JANUARY 5, 2005

SAN DIEGO, CALIFORNIA

VOL. 2

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO, EAST COUNTY DIVISION

DEPARTMENT 9 BEFORE HON. WILLIAM J. MCGRATH, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF, VS. JAMES CUNNINGHAM, DEFENDANT.	CASE NO. SCE243538

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JANUARY 5, 2005

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DEPUTY PUBLIC DEFENDER

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SAN DIEGO SUPERIOR COURT

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EL CAJON, CALIFORNIA; WEDNESDAY, JANUARY 5, 2005; 9:20 A.M.

THE COURT: WE ARE BACK ON THE RECORD IN THE MATTER OF THE PEOPLE VERSUS CUNNINGHAM. WE HAVE ALL 14 JURORS PRESENT, BOTH ATTORNEYS, AND THE DEFENDANT. AND WE'RE ABOUT READY FOR THE TRIAL TO START.

LADIES AND GENTLEMEN, NOW THAT YOU HAVE BEEN SELECTED TO ACT AS JURORS IN THIS CASE, YOU WILL, IN ESSENCE, BE THE JUDGES IN THIS COURTROOM. I WILL BE MORE OF A REFEREE DURING THE COURSE OF THE TRIAL. I WILL BE JUDGING NOTHING MORE SIGNIFICANT THAN WHEN WE'RE GOING TO TAKE OUR BREAKS AND MAKE RULINGS ON OBJECTIONS AND THE LIKE. BUT YOU WILL BE THE JUDGES OF THE FACTS OF THE CASE. AND IN FULFILLING YOUR RESPONSIBILITY AS JUDGING WHAT THE FACTS ARE, YOU WILL HAVE TO DETERMINE FROM THE EVIDENCE PRODUCED HERE JUST WHAT THOSE FACTS ARE, AND YOU HAVE A RESPONSIBILITY ALSO OF DETERMINING WHAT WEIGHT YOU SHOULD GIVE TO THE EVIDENCE.

YOU ALSO MUST DETERMINE THE CREDIBILITY OF THE WITNESSES WHO TESTIFY IN THE CASE, AND YOU'RE REQUIRED TO APPLY THE SAME STANDARDS TO EACH WITNESS, NO MATTER WHO THAT WITNESS MAY BE. NOW, THOSE STANDARDS BRIEFLY ARE AS FOLLOWS: A WITNESS IS PRESUMED TO SPEAK THE TRUTH. HOWEVER, THAT PRESUMPTION CAN BE OVERCOME BY SUCH THINGS AS THE MANNER IN WHICH THE WITNESS TESTIFIES, THE CHARACTER OF THE WITNESS'S TESTIMONY, THE WITNESS'S INTEREST IN THE CASE, IF ANY, ANY BIAS OR PREJUDICE THAT YOU PICK UP ON, ANY INCONSISTENT STATEMENTS THAT THE WITNESS MAY HAVE MADE DURING THIS TRIAL, OR ANY CONTRADICTORY TESTIMONY THAT MAY BE GIVEN. THESE ARE SOME OF THE FACTORS THAT YOU ARE TO CONSIDER IN ASSESSING AND

EVALUATING THE TESTIMONY OF WITNESSES. I'LL GIVE YOU FURTHER INSTRUCTIONS IN THIS REGARD AND ON OTHER LAWS AT THE CONCLUSION OF THE TRIAL.

WE HAVE RULES OF EVIDENCE THAT GUIDE US IN THE CONDUCT OF A JURY TRIAL. THESE RULES HAVE BEEN DEVELOPED OVER A COUPLE OF CENTURIES REALLY, BOTH IN THIS COUNTRY AND IN ENGLAND. AND WHEN THESE RULES OF EVIDENCE POP UP DURING THE TRIAL, SOMETIMES YOU MAY NOT FULLY UNDERSTAND THE REASONS BEHIND THEM, BUT I CAN ASSURE YOU THERE ARE GOOD REASONS FOR THEM EVEN IF THEY MAY NOT SEEM APPARENT.

ATTORNEYS MAKE OBJECTIONS FROM TIME TO TIME TO THE INTRODUCTION OF EVIDENCE OR THE ASKING OF QUESTIONS FROM THE OTHER ATTORNEY. I WILL EITHER OVERRULE AN OBJECTION, OR I WILL SUSTAIN THE OBJECTION. NOW, WHEN I OVERRULE AN OBJECTION, THAT MEANS THAT THE EVIDENCE IS PERMITTED. HOWEVER, IT DOES NOT EXPRESS ANY OPINION ON THE COURT'S PART AS TO HOW YOU SHOULD TREAT THE EVIDENCE. ALL I'M SAYING IS THAT YOU HAVE A RIGHT TO HEAR IT. YOU CAN GIVE IT A GREAT DEAL OF WEIGHT AS YOU CAN WITH ANY OTHER EVIDENCE. YOU CAN GIVE IT VERY LITTLE WEIGHT, OR YOU CAN COMPLETELY REJECT IT, BECAUSE THAT IS YOUR ROLE AS JUDGES OF THE FACTS.

NOW, IF I SUSTAIN AN OBJECTION TO THE INTRODUCTION OF TESTIMONY, THAT MEANS THAT YOU ARE TO BOTH DISREGARD THE QUESTION AS WELL AS ANY ANSWER OR PARTIAL ANSWER. NOW, WE RUN INTO KIND OF A TICKLISH SITUATION WHEN THERE'S BEEN A PARTIAL ANSWER OR A FULL ANSWER GIVEN TO A QUESTION. THINGS MOVE QUICKLY SOMETIMES. A WITNESS WILL GO AHEAD AND BLURT OUT AN ANSWER BEFORE I'VE HAD A CHANCE TO RULE ON THE

OBJECTION. IF I SUSTAIN THE OBJECTION, THAT MEANS THAT YOU SHOULD NOT HAVE HEARD THAT ANSWER, AND YOU WILL BE GIVEN AN INSTRUCTION BY THE COURT TO DISREGARD IT AND NOT ALLOW IT TO ENTER INTO YOUR DECISION MAKING PROCESS. THAT'S A DIFFICULT EXERCISE IN SELF-DISCIPLINE. IT'S HARD TO FORGET ABOUT SOMETHING THAT YOU'VE ALREADY HEARD. PLEASE DO THE VERY BEST YOU CAN. YOU CERTAINLY DO NOT ALLOW ANY STRICKEN TESTIMONY TO ENTER INTO YOUR DECISION-MAKING PROCESS IN THE JURY ROOM.

NOW, THE ATTORNEYS IN THIS CASE ARE NOT WITNESSES AND NOR ARE THE ATTORNEYS IN ANY CASE WITNESSES. THESE ATTORNEYS WERE NOT PRESENT DURING ANY OF THE EVENTS THAT YOU'LL HEAR DESCRIBED, AND, THEREFORE, THEY'RE NOT COMPETENT TO TELL YOU OR TO TESTIFY AS TO WHAT HAPPENED OR WHAT DID NOT HAPPEN. HOWEVER, THAT IS NOT TO SAY THAT YOU SHOULD DISREGARD WHAT THE ATTORNEYS HAVE TO SAY, THAT YOU SHOULD DISREGARD WHAT THEY HAVE TO SAY. THEY WILL ASK QUESTIONS OF WITNESSES, THEY'LL BRING OUT THE EVIDENCE, THEY'LL FACILITATE THE PRESENTATION OF THE EVIDENCE TO YOU. THEY WILL GIVE YOU OPENING STATEMENTS, THEY WILL GIVE YOU CLOSING ARGUMENTS. I JUST ASK YOU TO REMEMBER THAT WHAT THEY SAY IS NOT EVIDENCE.

THE ONLY EVIDENCE THAT YOU'RE GOING TO HEAR IS EITHER FROM WITNESSES WHO ARE SWORN AND TAKE THE WITNESS STAND, OR FROM OTHER TYPES OF PICTURES OR TAPES, OR SOMETHING LIKE THAT, DOCUMENTARY EVIDENCE. BUT WHAT THE ATTORNEYS SAY IS NOT EVIDENCE, AND YOU SHOULD NOT ASSUME IT TO BE TRUE NECESSARILY, OR TO BE COMPETENT EVIDENCE, ANYTHING THEY SAY ABOUT THE CASE.

AS AN EXAMPLE, THEIR OPENING STATEMENTS, WHICH THEY'LL

GIVE IN A FEW MINUTES, ARE SIMPLY AN ATTEMPT ON THEIR PART TO GIVE YOU KIND OF AN OVERVIEW OF WHAT THEY EXPECT THE EVIDENCE WILL SHOW, GIVE YOU KIND OF A PREVIEW OF THE EVIDENCE. AND SO IF THEY SAY SOMETHING DURING THAT OPENING STATEMENT, OR THE CLOSING ARGUMENT, IT'S THEIR OPINION OF WHAT'S GOING TO HAPPEN, OR WHAT WILL HAPPEN, BUT NOT NECESSARILY WHAT DID HAPPEN.

THE ATTORNEYS AND I WILL HAVE SIDEBAR CONFERENCES FROM TIME TO TIME. WE'RE TALKING ABOUT THINGS THAT OBVIOUSLY WE NEED TO TALK ABOUT OUTSIDE OF YOUR PRESENCE, SCHEDULING, LEGAL OBJECTIONS. WE ARE NOT TAKE TALKING ABOUT THE CREDIBILITY OF WITNESSES OR ANYTHING LIKE THAT. PLEASE DON'T TRY TO LISTEN IN. PLEASE DON'T TRY TO GUESS WHAT WE'RE TALKING ABOUT. FEEL FREE TO STAND UP, STRETCH YOUR LEGS, TAKE A BRIEF BREAK WHILE WE'RE AT SIDEBAR. THAT DOESN'T MEAN YOU CAN LEAVE THE COURTROOM. BUT IF THE SIDEBAR CONFERENCE IS GOING TO TAKE MORE THAN ABOUT 90 SECONDS, I'LL PROBABLY EXCUSE YOU AND HAVE YOU TAKE A SHORT BREAK.

NOW, AFTER I HAVE FINISHED GIVING YOU THESE PRELIMINARY COMMENTS, AND AFTER THE ATTORNEYS HAVE FINISHED WITH THEIR OPENING STATEMENTS, THEN YOU WILL RECEIVE NOTEBOOKS. AND EACH OF YOU WILL HAVE YOUR OWN NOTEBOOK. THEY'LL HAVE YOUR JUROR NUMBER ON THEM, AND THEY WILL BE YOUR PRIVATE PROPERTY WHILE YOU'RE IN THIS COURTROOM. NOBODY ELSE IS GOING TO LOOK INTO THEM. YOU SHOULD LEAVE THEM ON THE DESK OR ON THE CHAIR DURING EACH RECESS. YOU MAY NOT TAKE THEM OUTSIDE THE COURTROOM UNTIL IT'S TIME TO START YOUR DELIBERATIONS.

NOW, SOME JURORS TAKE A LOT OF NOTES, OTHER JURORS

HARDLY TAKE ANY. THAT'S REALLY UP TO YOUR OWN PERSONAL PREFERENCE. I WOULD JUST SUGGEST THAT YOU NOT TRY TO WRITE DOWN EVERY SINGLE WORD THAT YOU HEAR SPOKEN BECAUSE THERE'S REALLY ONLY ONE PERSON IN THE ROOM WHO IS COMPETENT TO DO THAT. AND IF YOU TRY TO WRITE DOWN EVERYTHING YOU'VE HEARD, YOU'RE GOING TO HAVE YOUR FACE BURIED IN THAT NOTEBOOK DURING THE TRIAL RATHER THAN OBSERVING THESE WITNESSES, AND SOMETIMES, THEIR DEMEANOR AND THE MANNER IN WHICH THEY TESTIFY IS JUST AS TELLING AS WHAT THEY HAVE TO SAY.

NOW, IT GOES WITHOUT SAYING THAT IT'S IMPORTANT TO FOCUS IN ON THESE WITNESSES AND TRY TO REMEMBER WHAT THEY'VE SAID THE FIRST TIME AROUND. I SAY THIS BECAUSE YOU'RE PROBABLY GOING TO HEAR FROM FOUR OR FIVE, MAYBE SIX, WITNESSES IN THIS CASE, MAYBE MORE. I'M NOT SURE. AND THREE DAYS FROM NOW, YOU MAY KIND OF FORGET WHO THAT FIRST WITNESS WAS IF ALL YOU DO IS WRITE THEIR NAME ON A TAB OF PAPER. YOU MIGHT WANT TO GIVE YOURSELF A LITTLE DESCRIPTION OF THE PERSON SO YOU CAN REMEMBER WHO THAT PERSON IS, AND YOU MAY CERTAINLY WANT TO WRITE DOWN IMPORTANT THINGS THEY SAID.

THE REASON I SAY THIS IS BECAUSE WHEN YOU'RE IN DELIBERATIONS AND THERE'S A DISCREPANCY BETWEEN WHAT YOU'VE HEARD, OR WHAT YOU THOUGHT YOU HEARD, AND WHAT ONE OF YOUR FELLOW JURORS HEARD OR THOUGHT HE HEARD, THEN YOU HAVE A RIGHT TO HAVE THE COURT REPORTER COME INTO THE DELIBERATIONS ROOM AND RE-READ THAT TESTIMONY. I, HOWEVER, HAVE A GROUND RULE THAT IF YOU DO REQUEST A RE-READ OF TESTIMONY, YOU MUST -- ALL 12 DELIBERATING JURORS MUST HEAR ALL OF THAT TESTIMONY FROM BEGINNING TO END, NOT JUST BITS OR PIECES OF IT.

NOW, SOME WITNESSES MAY BE ON THE STAND FOR QUITE SOME TIME, AND IT MAY TAKE MUCH LONGER THAN YOU'RE BARGAINING FOR TO HAVE SOMEBODY RE-READ THE TESTIMONY OF A PARTICULAR WITNESS. SO I ASK THAT YOU REALLY TRY TO FOCUS IN THE FIRST TIME AROUND AS TO WHAT THE WITNESS SAID SO THAT YOU MAY NOT NEED A RE-READ. BUT IF YOU DO NEED ONE, THEN WE'LL BE HAPPY TO PROVIDE ONE FOR YOU.

BOTH SIDES ARE ENTITLED TO THE INDIVIDUAL OPINION OF EACH OF YOU. THAT MEANS EACH JUROR, FOR YOURSELF, MUST DETERMINE THE GUILT OR INNOCENCE OF THE DEFENDANT. KEEP AN OPEN MIND IN THIS CASE. AND I DO WISH DO MORE THAN JUST PAY LIP SERVICE TO THAT CONCEPT. IT'S ONE OF THE MOST IMPORTANT THINGS YOU CAN DO, IT'S ONE OF THE MOST DIFFICULT THINGS YOU CAN DO. I'LL TELL YOU WHY.

THE PROSECUTION IN ANY CRIMINAL CASE PRESENTS THEIR CASE FIRST. MR. LINK WILL CALL HIS WITNESSES FIRST. YOU'LL HEAR THE PROSECUTION'S VERSION OF THE EVENTS FIRST. IT WILL BE A DISSERVICE AND UNFAIR TO THE DEFENSE FOR YOU TO START FORMING OPINIONS IN YOUR MIND ABOUT HOW YOU'RE GOING TO VOTE ON THIS CASE OR TO THINK YOU'VE GOT THE WHOLE SITUATION FIGURED OUT DURING THE PROSECUTION'S'S PRESENTATION OF THEIR EVIDENCE.

NOW, THE DEFENSE HAS NO OBLIGATION TO PRESENT ANY EVIDENCE. I BELIEVE THEY SAID THEY'RE GOING TO. BUT THEY HAVE NO OBLIGATION TO. BUT IF THEY DO, IT WOULD BE EQUALLY UNFAIR TO THE PROSECUTION FOR YOU TO START FORMING OPINIONS DURING THEIR WITNESSES ABOUT HOW YOU'RE GOING TO VOTE ON THE CASE. THE WHOLE IDEA OF KEEPING AN OPEN MIND MEANS HAVING THE SELF-DISCIPLINE TO NOT THINK ABOUT HOW YOU'RE GOING TO

VOTE ON THIS CASE UNTIL YOU ARE IN THE JURY DELIBERATION ROOM WITH THE OTHER 11 JURORS, AND HAVE PARTICIPATED WITH THEM IN SOME GIVE AND TAKE ON THEIR OPINIONS, YOUR OPINIONS, AND THEN AND ONLY THEN SHOULD YOU EVEN START THINKING ABOUT HOW YOU'RE GOING TO VOTE ON THE CASE.

I THINK SOMEBODY TALKED ABOUT A PREVIOUS EXPERIENCE WITH A JURY PANEL THAT THE FIRST THING THAT ONE OF THE JURORS SAID WHEN THEY WENT INTO THE DELIBERATION ROOM IS, "I BELIEVE THIS, AND NOBODY IS EVER GOING TO CHANGE MY MIND." THAT'S RARELY HELPFUL TO DO ANYTHING LIKE THAT. THAT MEANS THAT THAT JUROR HAD ALREADY DECIDED BEFORE THEY GOT INTO THE JURY ROOM HOW THEY WERE GOING TO VOTE, AND THEY DREW A LINE IN THE SAND, AND SOMETIMES A PERSON'S PRIDE MAY GET IN THE WAY OF THEIR COMMON SENSE. SO THE WHOLE IDEA OF KEEPING AN OPEN MIND MEANS, DON'T HAVE ANY HARD AND FAST OPINIONS ABOUT HOW YOU'RE GOING TO VOTE UNTIL YOU'VE HAD THE BENEFIT OF DISCUSSING THE CASE WITH YOUR FELLOW JURORS. IT'S A HARD THING TO DO. WE ASK YOU TO DO YOUR VERY BEST.

IT'S EXTREMELY IMPORTANT THAT YOU NOT HAVE ANY IDLE CHAT ABOUT THIS CASE OR ANY OF THE WITNESSES THAT YOU MAY HAVE HEARD DURING COFFEE BREAKS OR THE LIKE. IF FOUR OF YOU GET TOGETHER FOR A COFFEE BREAK OR HAVE LUNCH TOGETHER SOME DAY, YOU ARE NOT PRIVILEGED TO TALK ABOUT THE LAST WITNESS THAT WAS ON THE STAND, OR YOU'RE NOT PRIVILEGED TO TALK ABOUT THE MANNER IN WHICH THE ATTORNEY PRESENTS THE CASE, OR THE WAY THE WITNESS WAS DRESSED, OR ANYTHING HAVING TO DO WITH THE CASE. PLEASE TALK ABOUT ANYTHING ELSE. TALK ABOUT THE CHARGERS UPCOMING GAME. TALK ABOUT THE POLITICS OF THE CITY

OF SAN DIEGO. DON'T TALK ABOUT THIS CASE WHEN YOU'RE TOGETHER, PLEASE.

IF IT SHOULD COME TO THE COURT'S ATTENTION THAT THERE HAS BEEN SOME IDLE CHATTER, AND IT USUALLY DOES COME TO MY ATTENTION, SOMEBODY'S OVERHEARD IT AND REPORTS IT TO ME, THEN WE HAVE SOME PROBLEMS, AND WE COULD BE RISKING A MISTRIAL AND HAVING TO START ALL OVER AGAIN WITH A DIFFERENT PANEL. SO IT'S EXTREMELY IMPORTANT THAT YOU ABIDE BY THE COURT'S ORDERS IN THIS REGARD FOR THE INTEGRITY OF THE TRIAL.

WATER IS OKAY TO BRING INTO THE COURTROOM. WE ASK THAT YOU NOT BRING IN COKES OR FOOD. PLEASE MAKE SURE YOUR JUROR BADGES ARE ON AT ALL TIMES WHILE YOU'RE ON THE PREMISES OF THE COURTHOUSE. AND ONCE AGAIN, IF YOU SHOULD ENCOUNTER THE ATTORNEYS OR ANY WITNESSES, DON'T HAVE ANYTHING TO DO WITH THEM. IF YOU SEE POLICE OFFICERS IN UNIFORM OUT IN FRONT OF THE COURTROOM STANDING AROUND AT SOME POINT, THEY'RE PROBABLY GOING TO BE WITNESSES ON THIS CASE. ONE THING FOLKS LOVE TO DO WHEN THEY SEE POLICE OFFICERS IS WALK UP TO THEM AND ENGAGE THEM IN CONVERSATION. WELL, DON'T DO IT OUT IN FRONT OF THIS COURTROOM PLEASE BECAUSE THEY'RE PROBABLY GOING TO BE WITNESSES IN OUR TRIAL.

THAT'S ABOUT IT FOR THE DO'S AND THE DONT'S. I WILL DO MY VERY BEST TO KEEP THIS TRIAL MOVING. I WAS A JUROR MYSELF ONCE A FEW YEARS AGO ON A CASE. JUDGES GET CALLED FOR JURY SERVICE SAME AS EVERYONE ELSE. TO MY EVERLASTING SURPRISE, I WAS ACTUALLY SELECTED ON A CASE, AND I HAD TO STAND OUT IN FRONT OF THE COURTROOM AND TAP MY TOES WITH EVERYONE ELSE WONDERING WHAT WAS TAKING SO LONG IN THERE. SO I'M SENSITIVE

TO YOUR TIME.

BUT I KNOW THIS AS WELL, I KNOW IN JUST ABOUT EVERY TRIAL I'VE EVER PRESIDED OVER, THERE ARE ISSUES THAT POP UP IN THE MIDDLE OF THE TRIAL THAT NO ONE ANTICIPATED. AND IF I TELL YOU OUR BREAK IS GOING TO BE 20 MINUTES, AND 2 MINUTES INTO THE BREAK I'M HANDED AN ISSUE BY ONE OF THE ATTORNEYS THAT NEEDS LITIGATION OR NEEDS A DECISION, THEN IT MAY BE MORE THAN 20 MINUTES. BUT I CAN ASSURE YOU THAT IF WE ARE LATE FOR YOU, IT IS BECAUSE WE ARE IN HERE WORKING ON THE CASE AND NOT JUST BECAUSE WE'RE BEING NEGLIGENT. I WILL KEEP THE TRIAL MOVING AS BEST I CAN.

OKAY. WE WILL TURN THINGS OVER NOW TO THE ATTORNEYS FOR THEIR OPENING STATEMENTS. AND FIRST FOR THE PEOPLE WILL BE MR. LINK.

MR. LINK: THANK YOU, YOUR HONOR.

(OPENING STATEMENTS BY MR. LINK, REPORTED BUT NOT TRANSCRIBED HEREIN.)

THE COURT: THANK YOU, MR. LINK.

MR. GULLEY, DO YOU WISH TO GIVE AN OPENING STATEMENT AT THIS TIME OR PERHAPS RESERVE IT?

MR. GULLEY: I'M GOING TO RESERVE IT AT THIS TIME, YOUR HONOR.

THE COURT: MR. LINK, ARE YOU READY TO CALL YOUR FIRST WITNESS, OR DO YOU NEED A SHORT BREAK?

MR. LINK: I AM, YOUR HONOR.

THE COURT: OKAY. THE BAILIFF WILL PASS OUT THE NOTEBOOKS FOR EACH OF YOU JURORS. AND, MR. LINK, YOU MAY RETRIEVE YOUR FIRST WITNESS AND CALL THAT PERSON.

AND LADIES AND GENTLEMEN, WE HAVE THOSE PENCILS THERE FOR YOU TO USE, OR YOU'RE FREE TO USE YOUR OWN WRITING INSTRUMENTS, IF YOU HAVE ANY.

JOSE CASTRO,

HAVING BEEN FIRST DULY ADMINISTERED AN OATH IN ACCORDANCE WITH CODE OF CIVIL PROCEDURE SECTION 2094, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. LINK:

Q. SIR, COULD YOU PLEASE STATE AND SPELL YOUR NAME FOR THE RECORD.

A. MY NAME IS JOSE CASTRO, C-A-S-T-R-O.

Q. OKAY. AND I KNOW IT'S GOING TO BE KIND OF DIFFICULT, BUT I'M GOING TO ASK YOU TO TALK AS LOUDLY AND AS CLEARLY AS POSSIBLE, OKAY?

THE COURT: DO YOU NEED SOME WATER, SIR?

THE WITNESS: NO, I GOT A SORE THROAT, YOU KNOW. I GOT THE FLU.

THE COURT: THERE'S WATER THERE IF YOU NEED IT AT ANY POINT. YOU JUST NEED TO TWIST OFF THE TOP AND POUR IT.

THE WITNESS: OKAY, YOUR HONOR.

BY MR. LINK:

Q. SIR, ARE YOU OKAY?

A. YEAH.

Q. ALL RIGHT. YOU'RE A LITTLE SICK TODAY? YOU HAVE A HEADACHE?

A. YES, SIR.

Q. OKAY. ARE YOU GOING TO BE ABLE TO TESTIFY TODAY?

A. YES, I'LL TRY.

Q. OKAY. I'D LIKE TO TALK ABOUT SEPTEMBER 12TH, 2004, OF LAST YEAR. WHERE WERE YOU LIVING AT THAT TIME?

A. I WAS LIVING WITH MY FRIEND, REBECCA KNOX.

Q. AND WAS IT JUST THE TWO OF YOU IN THE APARTMENT?

A. NO, THE HUSBAND AND ONE KID -- ONE CHILD. THE HUSBAND AND THE CHILD.

Q. OKAY. SO REBECCA'S HUSBAND AND A CHILD?

A. YES.

Q. OKAY. AND HOW LONG HAD YOU BEEN LIVING THERE?

A. SINCE JUNE TILL AUGUST 14TH.

Q. AND COULD YOU PLEASE DESCRIBE WHAT THE APARTMENT LOOKS LIKE.

A. FILTHY. IT'S A MESS. THAT'S WHAT I WOULD SAY, IT'S A MESS.

Q. COULD YOU DESCRIBE -- HOW MANY BEDROOMS?

A. TWO BEDROOMS, A BATHROOM, AND A LIVING ROOM, AND A KITCHEN.

Q. AND DID YOU OCCUPY ONE OF THE BEDROOMS?

A. YES, SIR.

Q. I'M GOING TO SHOW YOU WHAT'S NOW BEING MARKED PEOPLE'S EXHIBIT 1 FOR IDENTIFICATION. IT'S SIX DIFFERENT PICTURES MARKED A THROUGH F. STARTING WITH LETTER B UP IN THE UPPER CENTER, DO YOU RECOGNIZE THAT?

(PEOPLE'S EXHIBIT 1, WHITE PHOTOBOARD WITH SIX PHOTOGRAPHS OF APARTMENT, MARKED FOR IDENTIFICATION.)

A. YES, SIR.
Q. OKAY. AND WHAT IS THAT?
A. THAT'S THE APARTMENT.
Q. OKAY. DID YOU LIVE UPSTAIRS OR DOWNSTAIRS?
A. UPSTAIRS, SIR.
Q. ALL RIGHT. AND --
A. ON THE SECOND FLOOR. THE SECOND FLOOR UPSTAIRS. WE LIVED RIGHT THERE.
Q. OKAY. COULD YOU PLEASE POINT TO IT. OKAY. THANK YOU.
SO THAT WAS THE APARTMENT YOU WERE LIVING IN ON SEPTEMBER 12TH?
A. YES, SIR.
Q. OKAY. AND PICTURES D, E, AND F, I KNOW IT'S ALL CLEANED UP NOW, BUT IS THAT A FAIRLY ACCURATE DESCRIPTION OF WHAT YOUR APARTMENT LOOKS LIKE?
A. YES, SIR.
Q. NOW, DID SOMETHING UNUSUAL HAPPEN ON THAT DAY, SEPTEMBER 12TH?
A. I WAS HELPING CHRISTOPHER PACKING BECAUSE THEY WERE MOVING. THEY GOT EVICTION. AND HE CAME OVER AND YELL AT ME UP THE STAIRS, "WHERE'S MY VACUUM?"
Q. OKAY. LET'S SLOW DOWN THERE. YOU SAID "HE CAME OVER." WHO ARE YOU TALKING ABOUT "HE"?
A. I DON'T KNOW HIS NAME.
Q. OKAY. DO YOU SEE HIM IN THE COURTROOM TODAY?
A. YES, SIR.
Q. COULD YOU PLEASE POINT TO WHERE HE'S SITTING AND

IDENTIFY AN ARTICLE OF CLOTHING HE'S WEARING.

A. RIGHT THERE. HE'S WEARING A STRIPED BLUE SHIRT.

MR. LINK: IDENTIFYING THE DEFENDANT?

THE COURT: YES.

MR. LINK: THANK YOU.

BY MR. LINK:

Q. SO HE CAME OVER TO YOUR APARTMENT?

A. YES, SIR.

Q. OKAY. WHY?

A. HE SAID, "WHERE'S MY VACUUM?" I SAID, "REBECCA'S NOT HERE." AND HE LEFT, AND HE SAID, "I'LL BE RIGHT BACK."

Q. OKAY. LET ME STOP YOU THERE. DID YOU RETURN HIS VACUUM EARLIER THAT DAY?

A. NO, RIGHT AFTER WE VACUUMED, I TOOK THE VACUUM OUT BECAUSE WE WERE GOING TO MOVE OUT. SO I WENT DOWNSTAIRS AND JUST PUT IT RIGHT THERE. I DIDN'T EVEN MOVE OUT. I JUST PUT IT RIGHT ON THE SIDE.

Q. OKAY. AND THAT SIDE AREA, IS THAT LIKE A PATIO?

A. YES, SIR.

Q. OKAY. DID YOU EVER GO INTO HIS HOUSE -- I'LL SAY HIS -- MR. CUNNINGHAM'S HOUSE TO RETURN THE VACUUM?

A. NO, SIR, I NEVER GO DOWN TO HIS HOUSE. I NEVER DID.

Q. ALL RIGHT. SO YOU JUST SET IT ON HIS PATIO?

A. YES, I SET IT OUTSIDE.

Q. AFTER YOU SET THE VACUUM ON MR. CUNNINGHAM'S PATIO, WHERE DID YOU GO?

A. I WENT UPSTAIRS.

Q. TO DO WHAT?
A. NOTHING, JUST TO GO UPSTAIRS. THAT'S ALL.
Q. OKAY. AND DID MR. CUNNINGHAM COME UP LATER AFTER YOU RETURNED THE VACUUM?
A. YES, SIR.
Q. WHAT HAPPENED?
A. HE CAME UP AND SAID TO ME, "WHERE'S MY CELL PHONE?"
Q. OKAY. NOW, AT THIS POINT, WHERE IS MR. CUNNINGHAM STANDING WHEN HE SAYS THAT?
A. DOWNSTAIRS FIRST ON THE PARKING LOT.
Q. OKAY. AND THEN WHERE DOES HE GO?
A. I DON'T KNOW. HE SAID, "I'LL BE RIGHT BACK."
Q. WELL, WHAT DID HE SAY ABOUT THE CELL PHONE?
A. NOTHING. HE JUST SAID, "I'LL BE RIGHT BACK." AND THEN I WAS STANDING UP IN THE HALLWAY, HE CAME OVER WITH THE GUN AND SAID, "WHERE'S MY CELL PHONE GODDAMNIT? I WANT MY CELL PHONE BACK. YOU TOOK MY CELL PHONE." AND THAT'S WHEN HE PUT THE GUN RIGHT HERE ON MY NECK.
Q. OKAY. SLOW DOWN. WHEN HE CAME UP THE SECOND TIME AND HE HAD A --
MR. GULLEY: OBJECTION. MISSTATES THE EVIDENCE.
THE COURT: OVERRULED.
BY MR. LINK:
Q. WHEN HE CAME UP A SECOND TIME, WHERE WERE YOU?
A. RIGHT THERE IN THE LIVING ROOM.
Q. YOU'RE IN THE LIVING ROOM. AND WHERE IS MR. CUNNINGHAM?
A. HE JUST BUSTED IN THE DOOR, THREW THE DOOR IN AND

WALKED IN.

Q. SO HE'S STANDING IN YOUR LIVING ROOM?

A. YEAH.

Q. I'LL SHOW YOU WHAT'S BEEN MARKED AS PEOPLE'S 2. IT APPEARS TO BE A DIAGRAM OF SOME SORT OF APARTMENT. DO YOU RECOGNIZE -- THIS DIAGRAM IS NOT TO SCALE. BUT DO YOU RECOGNIZE THIS PARTICULAR DIAGRAM?

(PEOPLE'S EXHIBIT 2, WHITE PHOTOBOARD WITH DIAGRAM OF APARTMENT, MARKED FOR IDENTIFICATION.)

A. YES, SIR.

Q. IS THAT A FAIR AND ACCURATE REPRESENTATION OF HOW YOUR APARTMENT IS?

A. YES, SIR.

Q. OKAY. WHEN MR. CUNNINGHAM CAME INTO YOUR APARTMENT, WHERE WERE YOU?

A. I WAS RIGHT HERE.

Q. OKAY. AND FOR THE RECORD, THERE ARE FOUR SEPARATE ROOMS, ALMOST FIVE. AS YOU WALK INTO THE NON-SCALED DIAGRAM, IT'S TO THE LEFT TOWARDS THE BACK.

THE COURT: IS THAT PEOPLE'S 2?

MR. LINK: YES, SIR.

THE COURT: THANK YOU.

BY MR. LINK:

Q. NOW, YOU'RE SITTING THERE. YOU SAID THE DEFENDANT CAME INSIDE OF YOUR APARTMENT?

A. YES, SIR.

Q. WHAT DID HE HAVE WITH HIM?

A. A SHORT RIFLE.

Q. OKAY. COULD YOU CLEARLY SEE IT?
A. YES, SIR.
Q. ALL RIGHT. YOU SAY SHORT AND YOU MADE SOME HAND GESTURES. HOW BIG WAS IT?
A. WELL, THIS LONG.
MR. LINK: OKAY. AND FOR THE RECORD, YOUR HONOR, THAT APPEARED TO BE ROUGHLY 2 FEET.
THE COURT: 18 INCHES TO 2 FEET.
MR. LINK: THANK YOU.
BY MR. LINK:
Q. AND WHAT DID THE DEFENDANT DO WITH THAT SHOTGUN? EXCUSE ME. WHAT DID THE DEFENDANT DO WITH THAT GUN?
A. HE WENT LIKE THIS AND PUT HIS HAND ON THE TRIGGER AND SAID, "WHERE IS MY CELL PHONE?" AND I SAID, "I DON'T KNOW ANYTHING ABOUT A CELL PHONE. I GOT MY OWN CELL PHONE. WHY SHOULD I NEED YOUR CELL PHONE." SO HE PUSHED THE GUN RIGHT TO MY THROAT -- TO MY THROAT, THEN I WAS TRYING TO GRAB THE PHONE.
Q. WHY WERE YOU TRYING TO GRAB THE PHONE?
A. YES.
Q. WHY WERE YOU TRYING TO GRAB THE PHONE?
A. I WAS GOING TO CALL THE COPS.
Q. WHAT PHONE ARE WE TALKING ABOUT?
A. A CORDLESS PHONE, SIR.
Q. OKAY. SO IT'S A CORDLESS PHONE IN THE APARTMENT?
A. YES, SIR.
Q. YOU WERE TRYING TO GRAB THE PHONE. WHAT HAPPENED NEXT?

A. I GOT THE PHONE WITH MY LEFT HAND, THEN HE GRABBED THE PHONE, PUSHED ME TO THE WALL, THEN HE THREW ME BACK THE PHONE.

Q. OKAY. LET ME STOP YOU THERE. YOU SAID HE PUSHED YOU UP AGAINST THE WALL. DID HE DO THAT WITH HIS HAND?

A. NO, WITH THE GUN.

Q. OKAY. WHERE DID THAT -- WHEN HE PUSHED YOU WITH THE GUN, WHERE WAS THE GUN ON YOUR BODY?

A. RIGHT HERE.

MR. LINK: AND JUST FOR THE RECORD, HE TOOK HIS LEFT HAND POINTING TO THE RIGHT SIDE OF HIS NECK.

THE COURT: YES.

BY MR. LINK:

Q. HE PUSHED YOU TO THE WALL, CORRECT? WHAT HAPPENED NEXT?

A. HE GRABBED THE PHONE FROM MY HAND. THEN HE THREW THE PHONE TO ME. HE SAID, "GO AHEAD AND CALL THE COPS. I'LL COME BACK AND KILL YOU ALL." SO CHRISTOPHER TOOK THE PHONE AND CALLED THE POLICE.

Q. OKAY. LET ME STOP YOU. WHERE DID CHRISTOPHER COME FROM?

A. IN THE BEDROOM. HE'S ALWAYS IN THE BEDROOM WATCHING TV AND, YOU KNOW, DRINKING HIS BEER.

Q. SO WHAT DID CHRISTOPHER DO?

A. HE CAME OVER WITH A BASEBALL BAT TO TELL HIM TO, "GET OUT OF MY HOUSE. GET OUT OF MY HOUSE," HE KEPT YELLING --

Q. WHAT DID THE DEFENDANT --

A. -- AT MR. CUNNINGHAM.
Q. WHAT DID THE DEFENDANT SAY, IF ANYTHING?
A. WHO?
Q. MR. CUNNINGHAM. SORRY.
A. "I'M GOING TO COME BACK AND KILL YOU ALL." THEN HE WENT DOWNSTAIRS AND HE KEPT YELLING IN THE PARKING LOT, "I GOT MONEY. I GOT MACHETES. I GOT MY OWN BUSINESS. I CAN DO ANYTHING I WANT."
Q. OKAY. LET ME STOP YOU AND BACK YOU UP JUST A LITTLE BIT. WHEN MR. CUNNINGHAM WAS LEAVING YOUR APARTMENT, DID HE YELL AT YOU?
A. YELL AT ME?
Q. YES.
A. NO.
Q. DID HE YELL AT ANYONE?
A. HE YELLED AT CHRISTOPHER.
Q. WHAT DID HE SAY OR DO?
A. HE SAID HE'S GOING TO KILL HIM, YOU KNOW, KILL US ALL.
Q. OKAY. SIR, AT THAT POINT, WERE YOU -- DID YOU BELIEVE THAT HE WAS GOING TO KILL YOU?
A. I DON'T KNOW, SIR. I DON'T KNOW HIS MIND. I CAN'T TELL HIS MIND.
Q. THAT'S FAIR ENOUGH. WERE YOU SCARED?
A. I AM. MY HEART -- I HAVE A BAD HEART. AND EVEN NOW, MY HEART IS PUMPING LIKE CRAZY. THAT'S WHY I'M NERVOUS.
Q. OKAY. YOU SAID MR. CUNNINGHAM WALKED OUT OR WENT DOWN THE STAIRS?

A. YES, SIR.

Q. HE WAS IN THE PARKING LOT?

A. YES, SIR.

Q. AND WHAT WAS HE DOING IN THE PARKING LOT?

A. KEPT YELLING. AND AFTER HE HEARD THE COPS COMING, HE TOOK OFF.

MR. GULLEY: OBJECTION. CALLS FOR SPECULATION.

THE COURT: SUSTAINED. JUST A MOMENT. THE ANSWER ABOUT WHAT HE THOUGHT THE DEFENDANT HEARD IS STRICKEN. THAT'S SPECULATION. AND IT IS NONRESPONSIVE. THE JURY IS NOT TO CONSIDER THAT.

MR. LINK: THANK YOU.

BY MR. LINK:

Q. WE'RE NOT ALLOWED TO TALK ABOUT WHAT HE MAY HAVE BEEN THINKING BECAUSE WE CAN'T GET INTO HIS HEAD. SO ALL I CAN TALK ABOUT IS WHAT YOU MAY HAVE HEARD.

YOU SAID HE WAS IN THE PARKING LOT, CORRECT?

A. YES, SIR.

Q. WHEN HE WAS IN THE PARKING LOT, AND THIS WHOLE EVENT HAD ALREADY HAPPENED TO YOU, WHERE DID YOU GO?

A. NOWHERE. JUST STAYED IN THE ROOM.

Q. OKAY. HOW DID YOU KNOW HE WAS IN THE PARKING LOT?

A. BECAUSE WE -- YOU KNOW, REBECCA SAW HIM WHERE DID HE GO, AND REBECCA TOLD THE COPS THAT HE WENT THE OTHER WAY TO THE FREEWAY.

Q. SO YOU --

MR. GULLEY: OBJECTION, YOUR HONOR. MOTION TO STRIKE.

THE COURT: JUST A MOMENT. MOTION TO STRIKE?

MR. GULLEY: THE STATEMENTS OF WHAT REBECCA SAW AND SAID. I'LL WITHDRAW IT.

THE COURT: I'M GOING TO OVERRULE IT ANYWAY.

MR. GULLEY: THAT'S FINE.

BY MR. LINK:

Q. SO YOU DIDN'T ACTUALLY SEE MR. CUNNINGHAM IN THE PARKING LOT?

A. YES, I SAW HIM BECAUSE I WAS IN THE KITCHEN.

Q. OKAY. WHAT WAS HE DOING?

A. I DON'T KNOW. JUST WALKING AND GOING TOWARDS HIS CAR WHEN WE CALLED THE COPS.

Q. GOING TOWARDS HIS CAR?

A. UH-HUH, HIS TRUCK.

Q. AND THEN WHERE DID YOU SEE HIM GO?

A. I DON'T SEE HIM WHERE DID HE GO.

Q. OKAY. BEFORE THIS DAY, HAD YOU EVER GOT IN A FIGHT WITH MR. CUNNINGHAM?

A. NO, SIR. I DON'T KNOW HIM.

Q. HAVE YOU EVER HAD ANY PROBLEMS WITH HIM?

A. NO.

Q. HAVE YOU EVER HAD ANY CONTACT WITH HIM?

A. NO, SIR. I DON'T CONTACT WITH ANYBODY, YOU KNOW, OF PEOPLE THAT I DON'T KNOW.

Q. SIR, YOU'VE BEEN STAYING IN A HOTEL NEARBY FOR THE LAST FIVE NIGHTS, CORRECT?

A. YES, SIR.

Q. AND THE DISTRICT ATTORNEY'S OFFICE PUT YOU UP

THERE, CORRECT?

A. YES, SIR.

MR. LINK: NOTHING FURTHER.

THE COURT: ALL RIGHT. CROSS-EXAMINATION, MR. GULLEY.

CROSS-EXAMINATION

BY MR. GULLEY:

Q. WHEN YOU SAY THE DISTRICT ATTORNEY'S OFFICE HAS BEEN PUTTING YOU UP, DOES THAT MEAN THEY'VE BEEN PAYING FOR YOUR HOTEL ROOM?

A. YES, SIR.

Q. HAVE THEY BEEN PAYING FOR YOUR FOOD ALSO?

A. NO, SIR.

Q. YOU PAY FOR YOUR OWN FOOD THEN?

A. YES, SIR.

Q. ALL RIGHT. WHEN DID YOU MOVE INTO THIS APARTMENT COMPLEX?

A. FROM JUNE -- I DON'T KNOW WHAT DAY, BUT IT'S JUNE.

Q. AND WHEN DID YOU MOVE OUT?

A. AUGUST AFTER WE GOT EVICTION.

Q. OKAY. WHY DID YOU GET AN EVICTION?

MR. LINK: OBJECTION. RELEVANCE.

THE COURT: SUSTAINED.

BY MR. GULLEY:

Q. WHERE DO YOU KNOW REBECCA KNOX FROM?

MR. LINK: OBJECTION. RELEVANCE.

THE COURT: OVERRULED.

THE WITNESS: FROM MY NIECE.

BY MR. GULLEY:

Q. OKAY. AND YOU ASKED HER IF YOU CAN MOVE IN WITH HER?

A. YES, SIR, BECAUSE I DON'T HAVE NO MONEY TO PAY THE MORTGAGE. SO I SAID, "MY CHECK'S NOT OUT YET," AND SHE SAID, "OKAY, I'LL GIVE YOU $100" --

MR. LINK: OBJECTION AT THIS POINT. NOT RESPONSIVE.

THE COURT: THAT WOULD BE HEARSAY.

BY MR. GULLEY:

Q. OKAY. SO YOU MOVED IN WITH REBECCA AND HER HUSBAND, CHRISTOPHER, CORRECT?

A. YES, SIR.

Q. AND YOU HAD BEEN LIVING THERE FOR A MONTH?

A. ALMOST TWO MONTHS.

Q. OKAY. NOW, YOU DESCRIBED THE HOUSE OR THE APARTMENT AS BEING FILTHY, CORRECT?

A. YES, SIR.

Q. WHAT DID YOU MEAN BY THAT?

MR. LINK: OBJECTION. RELEVANCE.

THE COURT: OVERRULED.

THE WITNESS: CLOTHES ALL OVER THE PLACE. SHE DOESN'T CLEAN THE HOUSE. I CLEAN IT UP, YOU KNOW. I'M THE ONE WASHING ALL THE DISHES.

MR. LINK: OBJECTION. NONRESPONSIVE AT THIS POINT.

THE COURT: OVERRULED.

BY MR. GULLEY:

Q. I'M SORRY, I DIDN'T HEAR THE REST OF YOUR ANSWER.

A. I'M THE ONE WHO SWEEPED THE FLOOR AND CLEANED THE BATHROOM, CLEANED MY ROOM WHERE I SLEEP, AND CLEAN THE KITCHEN.

Q. NOW, DURING THIS PERIOD OF TIME, DID YOU HAVE ANY CONTACT WHATSOEVER WITH MR. CUNNINGHAM?

A. NO, SIR.

Q. DID YOU SEE WHETHER MS. KNOX HAD ANY CONTACT WITH MR. CUNNINGHAM?

A. NO, SIR.

Q. OKAY. DID YOU EVER SEE ANY ARGUMENTS BETWEEN MR. CUNNINGHAM AND MR. KNOX?

A. YES, SIR, SHE HAVE A LOT. THEY WERE GOING TO KILL EACH OTHER. WHEN THEY ARGUED, THEY STARTED YELLING AT EACH OTHER. HE WOULD COME UP TO THE ROOM -- TO THE APARTMENT --

MR. LINK: OBJECTION. NONRESPONSIVE.

THE COURT: THE ANSWER IS "YES." THE QUESTION WAS, HAVE YOU EVER SEEN ANY ARGUMENTS BETWEEN KNOX AND CUNNINGHAM, AND YOUR ANSWER IS?

THE WITNESS: YES, SIR.

THE COURT: NEXT QUESTION.

BY MR. GULLEY:

Q. DO YOU KNOW HOW MANY ARGUMENTS YOU MAY HAVE SEEN BETWEEN THE TWO OF THEM?

A. YES, SIR.

Q. HOW MANY?

A. WELL, I CANNOT COUNT, SIR.

Q. OKAY. SO THERE WAS -- I'M SORRY. I DIDN'T MEAN TO CUT YOU OFF.

A. I SAID I CANNOT COUNT THEM. A LOT OF TIMES.
Q. SO IN THE 2 TO 3 MONTH PERIOD THAT YOU WERE STAYING AT THIS APARTMENT COMPLEX, YOU SAW MR. CUNNINGHAM AND MR. KNOX BASICALLY ARGUING, ALMOST FIGHT, NUMEROUS TIMES, CORRECT?
MR. LINK: OBJECTION. MISSTATES EVIDENCE, 2 TO 3 MONTHS.
THE COURT: SUSTAINED. REPHRASE YOUR QUESTION.
BY MR. GULLEY:
Q. IN THE 2 MONTHS THAT YOU STAYED THERE, YOU SAW MR. KNOX AND MR. CUNNINGHAM ARGUE NUMEROUS TIMES, CORRECT?
A. YES, SIR.
Q. NOW, WOULD IT BE FAIR TO SAY THAT YOU'RE A FRIEND OF CHRISTOPHER KNOX?
A. HE'S NOT MY FRIEND.
Q. BUT YOU LIVED WITH HIM, CORRECT?
A. YES, SIR.
Q. YOU'RE FRIENDS WITH HIS WIFE, REBECCA, CORRECT?
A. YES, SIR.
Q. ALL RIGHT. NOW, AT ANY POINT IN TIME, DID YOU EVER SEE CHRISTOPHER KNOX THREATEN TO KILL MR. CUNNINGHAM?
MR. LINK: OBJECTION. RELEVANCE.
THE COURT: OVERRULED.
THE WITNESS: YES, SIR.
BY MR. GULLEY:
Q. OKAY. AND HOW MANY TIMES DID YOU SEE THAT OR DID YOU HEAR THAT?
A. EVER SINCE I MOVED IN.

Q. OKAY. AT ANY POINT IN TIME, DID YOU EVER SEE MR. KNOX HOLD A BASEBALL BAT OR ANY OTHER WEAPON AND THREATEN MR. CUNNINGHAM WITH IT?
A. NO, SIR.
Q. OKAY. WHEN HE THREATENED TO KIM HIM ON THOSE TIMES THAT YOU SAW, DID HE HAVE A WEAPON WITH HIM?
A. NO, SIR.
Q. OKAY. HE WOULD JUST BE SCREAMING AT HIM?
A. YES, SIR.
Q. WAS MS. KNOX PRESENT AT ANY OF THOSE TIMES?
A. YES, SIR.
Q. OKAY. WOULD SHE ALSO BE YELLING AT MR. CUNNINGHAM?
A. YES, SIR.
Q. OKAY. DO YOU RECALL WHAT ANY OF THESE FIGHTS WERE ABOUT?
A. I DON'T HEAR THAT, SIR.
Q. DO YOU KNOW WHAT THEY WERE FIGHTING ABOUT?
A. OVER SOMETHING.
Q. OKAY. NOW, ON THE NIGHT OF SEPTEMBER THE 12TH, HAD YOU BEEN DRINKING?
A. ME?
Q. YES.
A. NO, SIR.
Q. HAD YOU BEEN USING ANY TYPES OF DRUGS?
A. NO, SIR. I ONLY USE MY PILLS THAT THEY GIVE ME FOR MY BACK AND MY HEAD.
Q. OKAY. SO YOU'RE ON SOME TYPE OF PRESCRIPTION MEDICATION?

A. YES, SIR.
Q. DO YOU KNOW WHAT THE NAME OF THE PRESCRIPTION MEDICATION YOU'RE ON?
A. NO, SIR. I COULDN'T BRING IT WITH ME.
Q. I'M SORRY?
A. I SAID I COULDN'T BRING IT WITH ME. IT'S FOR MY HEAD BECAUSE WHEN I WAS WORKING FOR A GLASS COMPANY --
THE COURT: NO. NO. JUST A MOMENT. WE DON'T NEED TO KNOW ANY OF IT. JUST WHAT IT IS, IF YOU KNOW.
THE WITNESS: NO, SIR.
BY MR. GULLEY:
Q. LET ME ASK YOU THIS. HOW DOES IT MAKE YOU FEEL WHEN YOU TAKE IT?
A. IT MAKES ME DROWSY AND NAUSEATED, AND, YOU KNOW, NERVOUS KIND OF STUFF. IT'S STRONG.
Q. OKAY. ON SEPTEMBER THE 12TH, WERE YOU TAKING THIS MEDICATION?
A. YES, SIR.
Q. OKAY. AND DID IT MAKE YOU FEEL LIKE THAT ON SEPTEMBER THE 12TH?
A. ON SEPTEMBER THE 12TH?
Q. YEAH. THE DAY THIS INCIDENT OCCURRED, WERE YOU TAKING YOUR MEDICATION?
A. YES, SIR.
Q. OKAY. ON THAT DATE -- YOU HAD TOLD US THIS MEDICATION MAKES YOU FEEL DROWSY?
A. YES, SIR.
Q. DOES IT MAKE YOU FEEL CONFUSED ALSO?

A. YES, SIR.

Q. ON THAT PARTICULAR DATE, WERE YOU FEELING DROWSY AND CONFUSED WHEN ALL THIS HAPPENED?

MR. LINK: OBJECTION TO CONFUSED. I DON'T THINK HE SAID CONFUSED, YOUR HONOR.

THE COURT: HE DIDN'T. OVERRULED. YOU CAN ANSWER, SIR.

THE WITNESS: YES, SIR.

BY MR. GULLEY:

Q. OKAY. NOW, YOU ORIGINALLY SAID THAT THE FIRST TIME YOU SAW MR. CUNNINGHAM WAS WHEN HE CAME TO THE APARTMENT ASKING FOR YOUR VACUUM -- EXCUSE ME -- ASKING FOR HIS VACUUM CLEANER?

A. NOT TO THE DOOR, FROM THE PARKING LOT.

Q. OKAY. TELL US ABOUT THAT. WHAT WAS THE FIRST CONTACT YOU HAD WITH MR. CUNNINGHAM THAT DAY?

A. I WAS STANDING ON THE PATIO ON THE PORCH ON THE -- YOU KNOW, TRYING TO GET FRESH AIR. HE SAID, "WHERE'S MY VACUUM AT?" I SAID, "I DON'T KNOW ANYTHING ABOUT A VACUUM."

Q. OKAY. LET ME STOP YOU THERE. IF YOU NEED SOME WATER AT ANY TIME, FEEL FREE TO HAVE SOME.

THE COURT: YOU NEED TO, I THINK, UNTWIST IT, SIR, AT THE TOP.

BY MR. GULLEY:

Q. OKAY. NOW, IT MAY HELP IF YOU CAN JUST POINT TO WHAT YOU'RE TALKING ABOUT. YOU SAID WHEN YOU FIRST SPOKE TO MR. CUNNINGHAM YOU WERE ON THE PATIO?

A. YES, SIR.

Q. OKAY. CAN YOU SHOW THE JURY WHERE YOU'RE TALKING ABOUT WHERE YOU WERE AT.

THE COURT: BEFORE YOU DO THAT, MR. CASTRO, COULD YOU GET THAT POINTER UP THERE, AND THAT WAY YOU CAN JUST STAY WHERE YOU ARE, USE THE POINTER WHILE YOU TESTIFY RATHER THAN HAVE TO GET UP.

THE WITNESS: OKAY. I WAS ON THE OTHER SIDE OF THIS PATIO. THERE'S ANOTHER PATIO RIGHT HERE TO THE NEXT DOOR.

BY MR. GULLEY:

Q. OKAY. SO YOU'RE POINTING TO PEOPLE'S EXHIBIT, I BELIEVE IT'S 1, PHOTOGRAPH B, CORRECT?

A. YES, SIR.

Q. AND YOU'RE SAYING THERE'S A PATIO IN THE BACK?

A. NO, THE OUTSIDE. YOU KNOW, THERE'S A HALLWAY. THIS IS NOT THE ONLY PORCH. YOU GO UP HERE, YOU MAKE A RIGHT TO ANOTHER APARTMENT. BUT WHEN I -- WHEN WE GO UP HERE, THE FIRST DOOR ON THE LEFT, IT'S WHERE I STAY AT.

Q. OKAY. SO WHEN YOU FIRST SPOKE TO MR. CUNNINGHAM, WHERE WERE YOU AND WHERE WAS HE? WELL, FIRST OF ALL, CAN YOU SEE IT ON THESE PHOTOGRAPHS WHERE HE WAS AND WHERE YOU WERE?

A. HE WAS IN THE PARKING LOT IN THE DOWNSTAIRS BY HIS APARTMENT. I WAS IN THE FRONT OF THE PATIO. HE SAID, "WHERE'S MY VACUUM," AND I SAID, " I DON'T KNOW ANYTHING OF THE VACUUM. WAIT UNTIL REBECCA COMES BACK."

Q. OKAY. LET ME STOP YOU THERE. WHAT TIME WAS THIS WHEN THAT HAPPENED?

A. I BELIEVE IT WAS A LITTLE BIT IN THE AFTERNOON. I

DON'T KNOW WHAT TIME.
Q. OKAY. IT WASN'T DARK YET, CORRECT?
A. NO.
Q. ALL RIGHT. AND AT THE TIME HE ASKED YOU FOR HIS VACUUM, HE WASN'T MAD AT YOU OR ANYTHING, CORRECT?
A. NO, SIR.
Q. OKAY.
A. HE WASN'T MAD.
Q. IT WAS JUST A QUESTION, "WHERE'S MY VACUUM," CORRECT?
A. YES, SIR.
Q. ALL RIGHT. AND PRIOR TO THIS DATE, YOU NEVER HAD ANY NEGATIVE CONTACT WITH HIM, CORRECT?
A. NO, SIR.
Q. OKAY. HE NEVER THREATENED TO BEAT YOU UP OR ANYTHING?
A. NO, SIR, I NEVER KNEW THE GUY.
Q. EVERYTHING YOU SAW WAS BETWEEN HIM AND THE KNOXES, CORRECT?
A. YES, SIR.
Q. NOW, HOW LONG WAS IT BEFORE YOU SAW MR. CUNNINGHAM AGAIN?
A. IT WAS ABOUT 6 O'CLOCK OR 7 O'CLOCK IN THE EVENING.
Q. OKAY. AND WHEN DID YOU RETURN -- HAD YOU RETURNED THE VACUUM BY THAT TIME?
A. YES, SIR, I RETURNED THE VACUUM WHEN HE LEFT BECAUSE CHRISTOPHER TOLD ME THAT, YOU KNOW, THE VACUUM -- I TOLD -- I'M SORRY. I TAKE THAT BACK. I TOLD CHRISTOPHER, I

SAID, "CHRISTOPHER, MR. CUNNINGHAM CAME OVER HERE AND SAID, 'WHERE'S MY VACUUM,' YOU KNOW, AND I SAID 'WAIT UNTIL REBECCA COMES BACK.'" THEN HE SAID, "GO AHEAD AND PUT IT DOWN," SO I DID. I JUST CARRIED THE VACUUM BECAUSE I WAS JUST GOING TO PUT IT BY THE STAIRS, YOU KNOW, BUT I'M SCARED SOMEBODY MIGHT TOOK IT, SO --

Q. OKAY. WHEN YOU SAY YOU PUT IT BACK BY THE STAIRS, AGAIN, CAN YOU SHOW US ON THIS WHERE EXACTLY YOU PUT IT.

A. I WAS GOING TO PUT IT RIGHT THEIR. THEN I WALKED DOWNSTAIRS AND JUST WALKED TO THE -- UNDER THE -- WALKED OVER HERE. THEN I JUST WALKED AND PUT THE VACUUM RIGHT ON THE PORCH, LIKE THE PORCH LIKE THIS. SO I JUST STICK IT IN LIKE THAT. I DIDN'T EVEN WALK UP TO THE STAIRS.

Q. OKAY. DID YOU SEE IF THERE WAS ANY WINDOWS THAT WERE OPEN OR ANY DOORS THAT WERE OPEN AT THAT TIME?

A. NO, SIR. I WASN'T LOOKING FOR THIS.

Q. AND DO YOU KNOW WHAT TIME YOU ACTUALLY PUT THE VACUUM THERE?

A. IT WAS ABOUT MAYBE 4 OR 5 O'CLOCK.

Q. OKAY. ALL RIGHT. HOW MUCH LONGER AFTER THAT DID MR. CUNNINGHAM -- DID YOU SEE MR. CUNNINGHAM AGAIN?

A. AFTER I PUT THE VACUUM?

Q. YES.

A. HE CAME UP ANOTHER HOUR AND A HALF.

Q. OKAY. SO THAT WOULD BE ABOUT 6:30?

A. I BELIEVE SO, SIR.

Q. AND IS THAT THE TIME YOU SEEN HIM WITH THE GUN WITH HIM?

A. NO, SIR, HE DIDN'T HAVE THE GUN WITH HIM THAT TIME.

Q. OKAY. WHEN HE CAME THAT TIME, WHAT HAPPENED?

A. HE CAME UP AT THAT TIME AND SAYS, "WHERE'S MY VACUUM?" AND I GO, "I PUT THE VACUUM DOWN," AND I SAID, "I DID. I DID PUT THE VACUUM DOWN FOR REBECCA. IT'S NOT HERE. SHE NEVER CAME BACK." HE SAYS, "MY CELL PHONE IS MISSING." I SAID, "SIR, I DON'T KNOW ANYTHING ABOUT A CELL PHONE."

Q. DID HE SAY ANYTHING ELSE ABOUT CLOTHES OR CHECKS BEING MISSING FROM HIS APARTMENT ALSO?

A. NO, SIR. THAT APARTMENT HAS A LOT OF PEOPLE GOING IN AND OUT, IN AND OUT EVERY NIGHT EVERY DAY, AND I KNOW --

MR. LINK: OBJECTION. NONRESPONSIVE.

THE COURT: EVERYTHING AFTER "NO, SIR," IS STRICKEN AS NONRESPONSIVE. THE JURY IS NOT TO CONSIDER.

NEXT QUESTION.

BY MR. GULLEY:

Q. OKAY. SO THE ONLY THING HE ASKED YOU ABOUT WAS THE CELL PHONE?

A. YES, SIR.

Q. OKAY. THAT WAS ABOUT 6:30, CORRECT?

A. YES, SIR.

Q. AND WHAT TIME DID HE COME BACK? YOU SAID HE CAME BACK AGAIN, CORRECT?

A. YES, SIR.

Q. WAS THAT THE NEXT TIME YOU SAW HIM?

A. THAT'S THE NEXT TIME I SAW HIM WITH THE GUN.

Q. OKAY. AND WHAT TIME WAS THAT?

MR. LINK: I'M GOING TO OBJECT TO SPECULATION AT

THIS POINT, YOUR HONOR.

THE COURT: OVERRULED. YOU CAN ANSWER, IF YOU KNOW. IF YOU DON'T KNOW, YOU CAN SAY THAT.

THE WITNESS: NO, SIR. I DON'T KNOW.

BY MR. GULLEY:

Q. WAS IT 5 MINUTES LATER, WAS IT AN HOUR LATER, WAS IT 5 HOURS LATER?

A. I DON'T KNOW, SIR.

Q. IS THAT BECAUSE OF THE MEDICATION YOU WERE TAKING THAT NIGHT?

MR. LINK: OBJECTION.

THE COURT: OVERRULED.

THE WITNESS: YES, SIR

BY MR. GULLEY:

Q. SO THE MEDICATION MADE -- YOUR TIMES MAY BE A LITTLE FUZZY, RIGHT?

A. YES, SIR.

Q. YOUR MEMORY MAY BE A LITTLE FUZZY, TOO, CORRECT?

A. YES, SIR. I HAVE A MENTAL DISORDER, SIR.

Q. YOU WHAT?

A. I HAVE A MENTAL DISORDER. I DON'T KNOW HOW TO EXPLAIN.

MR. LINK: OBJECTION AT THIS POINT. NONRESPONSIVE.

THE COURT: SUSTAINED.

MR. GULLEY: I'M SORRY, YOUR HONOR?

BY MR. GULLEY:

Q. I'M SORRY. I DIDN'T UNDERSTAND WHAT YOU WERE SAYING.

A. MENTAL DISORDER.

Q. YOU HAVE A MENTAL DISORDER?

A. YES, SIR, FROM THE ACCIDENT.

Q. AND THIS IS AN ACCIDENT THAT HAPPENED BEFORE SEPTEMBER THE 12TH?

A. YES, SIR.

Q. OKAY. ARE YOU TAKING MEDICINES FOR THIS MENTAL DISORDER?

A. YES, SIR.

Q. AND THIS MENTAL DISORDER, WHAT KIND OF DISORDER IS IT?

MR. LINK: OBJECTION. RELEVANCE AND FOUNDATION.

THE COURT: OVERRULED. YOU CAN BRIEFLY ANSWER.

THE WITNESS: I WAS WORKING AT THAT TIME.

THE COURT: NO. NO. WE DON'T WANT TO KNOW THE HISTORY OF IT, JUST WHAT IS IT CALLED, IF YOU KNOW.

THE WITNESS: NO, SIR. I DON'T KNOW WHAT IT'S CALLED. JUST 5150.

THE COURT: OKAY.

BY MR. GULLEY:

Q. I'M SORRY? IT'S JUST -- I'M SORRY, I DIDN'T HEAR WHAT YOU SAID.

A. THEY SAID IT'S 5150. THEY CALL ME 5150. I DON'T KNOW WHAT IT IS.

Q. OKAY. LET ME ASK YOU THIS, WHAT DOES THIS MENTAL DISORDER DO TO YOU? HOW DOES IT MAKE YOU FEEL OR ACT OR THINK?

A. IF I TAKE THE PILLS, I CONTROL MY HEAD NOT TO GO

CRAZY.

Q. OKAY. SO YOU HAVE -- IF YOU DON'T TAKE THE MEDICINE YOU GO CRAZY?

A. NO, SIR, I CAN CONTROL MYSELF.

Q. OKAY. THEN MY QUESTION AGAIN IS, WHAT DOES THIS MENTAL DISORDER DO TO YOU?

MR. LINK: OBJECTION. ASKED AND ANSWERED.

THE COURT: OVERRULED, YOU CAN ANSWER.

THE WITNESS: LIKE I'M HEARING THINGS, NOISE, A LOT OF YELLING AT ME, PEOPLE COMES TO KILL ME. THAT'S ALL THE ONE I HEARD.

BY MR. GULLEY:

Q. SIMILAR TO WHAT YOU'VE DESCRIBED TODAY?

A. YES, SIR.

Q. NOW, YOU INDICATED DURING EVERY OCCASION THAT MR. CUNNINGHAM CAME TO THE APARTMENT, CHRIS WAS IN THE OTHER ROOM?

A. YES, SIR.

Q. AND YOU SAID CHRIS WAS DRINKING BEER AND JUST WATCHING TV?

A. YES, SIR.

Q. DO YOU KNOW IF CHRIS WAS USING ANY DRUGS OR NOT?

MR. LINK: OBJECTION.

THE WITNESS: NOT AT ALL, SIR.

THE COURT: OVERRULED. YOUR ANSWER IS?

THE WITNESS: NO, SIR.

BY MR. GULLEY:

Q. NOW, AT SOME POINT YOU SAID MR. CUNNINGHAM -- WELL, FIRST OF ALL, WHEN MR. CUNNINGHAM CAME BACK WITH THE GUN, WHERE WAS REBECCA KNOX?

A. SHE WAS RIGHT IN THE LIVING ROOM. SHE JUST CAME BACK.

Q. WAS SHE SITTING IN THE LIVING ROOM, STANDING, DO YOU REMEMBER?

A. NO, STANDING UP RIGHT NEXT TO ME.

Q. OKAY. ALL RIGHT. AND, AGAIN, YOU DON'T KNOW WHAT TIME THIS WAS, CORRECT?

A. NO, SIR.

Q. OKAY. YOU SAID HE TOOK YOUR PHONE AWAY FROM YOU, A CORDLESS PHONE FROM YOU?

A. YES, SIR.

Q. THEN HE GAVE IT BACK TO YOU?

A. NO.

Q. WHAT HAPPENED?

A. HE PUSHED ME TO THE WALL WITH THE GUN ON MY THROAT AND GRABBED THE PHONE AWAY FROM MY HAND. THEN AFTER THAT, HE THREW THE PHONE AT ME.

Q. AND TOLD YOU YOU BETTER NOT CALL THE POLICE?

A. YES, SIR.

Q. ALL RIGHT. WHAT WAS REBECCA DOING AT THIS TIME, IF YOU KNOW?

A. NOTHING, SIR, JUST STANDING THERE.

Q. OKAY. WAS SHE LAUGHING, CRYING, SCREAMING?

A. NO, SIR.

Q. YOU DON'T KNOW WHAT SHE WAS DOING?

A. NOTHING, JUST STANDING RIGHT THERE.

Q. OKAY. AND CHRISTOPHER WAS STILL INSIDE THE ROOM?
A. NO, UNTIL HE HEARD ME WHEN I HIT THE WALL. THAT'S WHEN HE CAME OUT. I WAS -- HE WAS COMING OUT WITH A BASEBALL BAT AND HE SAYS, "GET OUT OF MY HOUSE. GET OUT OF MY HOUSE." THEY KEPT ARGUING.
Q. AT ANY POINT, DID YOU FALL DOWN?
A. YES, SIR.
Q. WHEN?
A. WHEN HE PUSHED ME TO THE WALL I FELL ON THE FLOOR.
Q. DID YOU SUSTAIN ANY INJURIES?
A. I HURT MY BACK AGAIN THAT TIME BECAUSE I GOT A BROKEN BACK FROM AN ACCIDENT.
Q. MR. CUNNINGHAM IS QUITE BIGGER THAN YOU, CORRECT?
A. YES, SIR.
Q. ALL RIGHT. AND YOU'VE SEEN HIM PRIOR TO THAT NIGHT, YOU'VE SEEN HIM WALKING AROUND THE RESIDENCE, CORRECT?
A. NO, SIR.
Q. YOU'VE SEEN HIM IN THE AREA BEFORE, CORRECT?
A. I SEE HIM IN THE AREA, YES, SIR.
Q. AND YOU'VE SEEN HIM ARGUING WITH MR. KNOX?
A. OH, YES. YES, SIR.
Q. OKAY. AND YOU'VE SEEN THAT HE'S MUCH BIGGER THAN YOU, CORRECT?
A. YES, SIR.
Q. ALL RIGHT. WHEN THE POLICE ARRIVED, DID THEY TAKE ANY PHOTOGRAPHS OF YOU?
A. NO, SIR.
Q. OKAY. DID YOU POINT TO THEM AND SAY, "SEE THIS

MARK ON MY NECK. THIS IS FROM THE GUN"?
A. YES, SIR.
Q. DID THEY TAKE ANY PHOTOGRAPHS OF THAT?
A. NO, SIR.
Q. OKAY. DID YOU ASK THEM TO?
A. I DON'T KNOW, SIR, IF I HAVE TO. BUT I SHOW HIM -- I SHOWED IT RIGHT HERE. IT WAS A RED SPOT.
Q. OKAY. DID YOU COMPLAIN ABOUT YOUR BACK BEING HURT, TOO?
A. YES, SIR, I HAD A BROKEN BACK.
Q. AND YOU TOLD THE OFFICER YOUR BACK WAS HURTING?
A. YES, SIR.
Q. NOW, THEY ASKED YOU TO WRITE OUT A STATEMENT THAT NIGHT; IS THAT CORRECT?
A. I DIDN'T HEAR THAT, SIR.
Q. THE POLICE, THEY ASKED YOU TO WRITE OUT A STATEMENT, CORRECT?
A. YES, SIR.
Q. REFERRING TO --
MR. GULLEY: YOUR HONOR, I'M NOT GOING TO INTRODUCE THIS. DO YOU WANT IT MARKED?
THE COURT: YOU'RE NOT GOING TO?
MR. GULLEY: NO.
THE COURT: NO.
BY MR. GULLEY:
Q. SHOWING YOU WHAT APPEARS TO BE YOUR STATEMENT; IS THAT YOUR STATEMENT?
A. YES, SIR.

Q. OKAY. IS THIS YOUR FIRST TIME SEEING THIS STATEMENT SINCE THAT NIGHT?
A. YES, SIR.
Q. ALL RIGHT. ACCORDING TO YOUR STATEMENT, YOU TOOK THE VACUUM BACK ABOUT 4:30; IS THAT RIGHT?
A. YES, SIR.
Q. ACCORDING TO YOUR STATEMENT, HE CAME IN THE HOUSE WITH THE GUN RIGHT AFTER THAT?
A. NO, SIR.
Q. OKAY.
A. NOT RIGHT AFTER THAT.
Q. OKAY. YOU SAID IT WAS ABOUT 2 HOURS LATER, CORRECT?
A. YES, SIR.
Q. ABOUT 6:30?
A. NO, SIR.
Q. OKAY. HE CAME ONE TIME AT 6:30, THEN?
A. HE CAME ABOUT 6:30 TO AN HOUR, THEN HE CAME BACK.
Q. OKAY. AND AT THAT TIME HE CAME BACK, HE DIDN'T HAVE THE GUN?
A. THE FIRST TIME, YES, SIR.
Q. ALL RIGHT. NOW, ON THE SECOND TIME HE CAME BACK WAS WHEN?
A. LATER IN THE EVENING AT 7. HE HAD THE GUN WITH HIM.
Q. AT WHAT TIME?
A. LIKE 7, 7:30, LIKE THAT. I DON'T REMEMBER, SIR, OF THOSE TIMES.

Q. BUT YOU THINK IT WAS ABOUT 7 OR 7:30, CORRECT?
A. YES, SIR.
Q. NOW, IN YOUR STATEMENT, YOU NEVER SAID HE PUSHED YOU TO THE GROUND; IS THAT CORRECT?
A. NO.
Q. OKAY. THE FIRST TIME YOU SAID THAT WAS TODAY, CORRECT?
A. YES, SIR.
Q. OKAY. BY THE WAY, DID YOU TALK TO THE DISTRICT ATTORNEY ABOUT WHAT HAPPENED THAT EVENING?
A. NO, SIR.
Q. DID YOU TALK TO HIS INVESTIGATOR?
A. NO, SIR.
Q. YOU NEVER TALKED TO ANYBODY ABOUT WHAT HAPPENED THAT EVENING?
A. NO, SIR.
Q. DID YOU TALK TO THE POLICE?
A. YES, SIR.
Q. THAT EVENING?
A. YES, SIR.
Q. YOU'RE SAYING YOU HAVEN'T TOLD ANYBODY ELSE ABOUT WHAT HAPPENED?
A. NO, SIR. THEY CAME OVER TO MY MOTEL AND I SAID, "NO, I DON'T WANT TO TALK TO ANYBODY ELSE ANYMORE."
Q. OKAY. AND THE D.A. DIDN'T DISCUSS WHAT YOU WERE GOING TO TESTIFY TO TODAY?
A. NO, SIR. AND I CALLED DAN AND I SAID, "THIS INVESTIGATOR CAME OVER TO MY MOTEL AND I ASKED ME A

QUESTION," AND I SAID, "I DIDN'T TELL HIM ANYTHING," AND HE SAYS, "NO, YOU DON'T HAVE TO IF YOU DON'T WANT TO TALK TO THEM." SO THAT'S WHAT I DID.

Q. OKAY. WELL, FIRST OF ALL, WHEN YOU SAY WHEN YOU TALKED TO DAN, YOU'RE TALKING ABOUT MR. LINK, THE DISTRICT ATTORNEY HERE, RIGHT?

A. YES.

Q. YOU GUYS ARE ON A FIRST NAME BASIS, YOU CALL HIM DAN.

ALL RIGHT. AND YOU SAID SOMEBODY CAME OVER TO TALK TO YOU ABOUT THE CASE?

A. YES, SIR.

Q. BUT YOU DIDN'T WANT TO TALK TO THEM, CORRECT?

A. YES, SIR.

Q. AND YOU CALLED DAN, MR. LINK HERE, AND TOLD HIM -- AND HE SAID YOU DON'T HAVE TO TALK TO THEM IF YOU DON'T WANT TO, CORRECT?

A. NO, SIR. I SAID, "I DON'T WANT TO TALK TO YOU, TOO, AND I DON'T WANT TO SAY ANYTHING ANYMORE BECAUSE I'M GETTING SCARED OF THIS," AND SO I MOVED TO A MOTEL BECAUSE I DON'T KNOW WHAT HE COULD DO TO ME.

Q. OKAY. BUT THEY DECIDED TO PUT YOU UP FOR 5 DAYS IN THEIR HOTEL, CORRECT?

A. YES, SIR.

Q. AND HAVE YOU TALKED TO THEM SINCE THEN?

A. YES, SIR.

Q. OKAY. AND WHEN YOU TALKED TO THEM, YOU TALKED ABOUT THIS CASE, CORRECT?

A. NO, SIR.

Q. YOU DIDN'T TALK TO THEM ANYTHING AT ALL ABOUT THIS CASE?

A. NO, SIR.

Q. WHEN YOU TALKED TO HIM, WHAT DID YOU TALK TO HIM ABOUT THEN?

A. HE TOLD ME ABOUT HOW I AM GOING TO BE HERE, YOU KNOW, IN THE COURT TO TESTIFY. HE SAID, "YES," THAT'S ALL WE SAID.

Q. NOW, I'M SOMEWHAT CONFUSED ABOUT THIS PERSON WHO CAME TO TALK TO YOU AND YOU DIDN'T WANT TO TALK TO THEM.

A. YES, SIR.

Q. THAT WAS AN INVESTIGATOR WHO WAS WORKING FOR MR. CUNNINGHAM, CORRECT?

A. I BELIEVE SO. I DON'T KNOW WHO.

Q. ALL RIGHT. AND YOU TOLD -- IT WAS A FEMALE, CORRECT?

A. A FEMALE AND A MALE.

Q. OKAY. AND YOU TOLD HER THAT YOU DIDN'T WANT TO TALK TO HER?

A. YES, SIR.

Q. AND THEN YOU CALLED DAN AND SAID, "THIS PERSON CAME BY BUT I DIDN'T TALK TO HIM"?

A. YES, SIR.

Q. AND DAN, OR MR. LINK, SAYS, "WELL, YOU DON'T HAVE TO TALK TO HER."

MR. LINK: OBJECTION. HEARSAY.

THE COURT: OVERRULED.

THE WITNESS: WHAT WAS IT AGAIN?
BY MR. GULLEY:
Q. YOU TOLD US EARLIER THAT HE SAID TO YOU YOU DON'T HAVE TO TALK TO THEM, CORRECT?
A. YES, SIR.
Q. OKAY. SO YOU DIDN'T TALK TO HER, CORRECT?
A. NO, SIR.
Q. ALL RIGHT. NOW, YOU WERE BROUGHT TO COURT TODAY BY A D.A. INVESTIGATOR, CORRECT?
A. YES, SIR.
Q. DID YOU TALK TO HIM ABOUT THE CASE?
A. NO, SIR, I DON'T DISCUSS THE CASE, WHAT HAPPENED TO NOBODY.
Q. OKAY. IS HE THE ONE PAYING FOR YOUR HOTEL ROOM?
MR. LINK: OBJECTION. ASKED AND ANSWERED.
THE COURT: SUSTAINED.
BY MR. GULLEY:
Q. DO YOU RECALL WHAT YOU WERE BEING EVICTED FOR?
MR. LINK: OBJECTION. RELEVANCE.
THE COURT: SUSTAINED.
MR. GULLEY: MAY I DO SIDEBAR REAL QUICKLY?
THE COURT: OKAY.
(SIDEBAR CONFERENCE, NOT REPORTED.)
THE COURT: OKAY. THE OBJECTION TO THE LAST QUESTION WILL BE OVERRULED. YOU MAY RE-ASK THE QUESTION.
BY MR. GULLEY:
Q. OKAY. DO YOU KNOW WHY YOU WERE BEING EVICTED?
A. WHY BEING EVICTED?

Q. YES.
A. NOT ME. IT WAS REBECCA AND CHRISTOPHER.
Q. DO YOU KNOW WHY?
A. BECAUSE THEY DON'T PAY THE RENT. THEY DON'T PAY THEIR BILLS.
Q. OKAY. NOW, WERE YOU GUYS LEAVING THE HOUSE THAT DAY, OR WERE YOU LEAVING LATER ON THAT WEEK?
A. YES, SIR, TILL I'M READY TO MOVE BECAUSE I DON'T WANT TO BE -- I DON'T WANT THE SHERIFF TO COME AND KICK US OUT, AND IT HAPPENED, I THINK. I LEFT, AND I LEAVE FOR THE STREET, SLEEP RIGHT BEHIND BUILDINGS BECAUSE I DON'T HAVE NO MONEY.
Q. OKAY. SO YOU -- I THINK MY QUESTION WAS, DID YOU AND THE KNOXES LEAVE THAT NIGHT OR THE NEXT DAY, OR --
A. AFTER WE CLEANED IT, NO, SIR. I LEAVE MYSELF. I MOVE OUT MYSELF.
Q. OKAY. SO YOU LEFT THAT NIGHT?
A. YES.
Q. NOW, YOU SAID AT SOME POINT HE WAS IN THE PARKING LOT AND HE WAS SCREAMING HE'S GOT MONEY AND MACHETES?
A. YES, SIR.
Q. AND YOU HEARD HIM SAY THAT?
A. YES, SIR. HE SPOKE LOUD.
Q. AND HE WAS SAYING THIS TO CHRISTOPHER?
A. I DON'T KNOW WHO HE WAS TALKING.
Q. HE WASN'T SAY IT TO YOU, CORRECT?
A. NO.
Q. ALL RIGHT. AND YOU SAID HE WAS JUST WALKING

TOWARDS HIS TRUCK WHEN YOU SAW HIM LAST, CORRECT?

A. YES, SIR.

Q. HE WASN'T RUNNING OR ANYTHING, CORRECT?

A. NO.

Q. NOW, AT ANY POINT IN TIME, DID YOU EVER SEE HIM TURN AROUND AND POINT THAT GUN BACK TOWARDS YOU OR THE KNOXES?

A. NO, SIR.

Q. SO HE WAS JUST LEAVING THE AREA WITH THE GUN UNDER HIS ARM?

A. I BELIEVE SO, SIR

Q. AND I THINK I ASKED YOU THIS. OTHER THAN YOUR -- I WITHDRAW THAT.

WHAT MEDICATIONS ARE YOU TAKING TODAY?

A. I TOOK BABY ASPRIN FOR MY HEART AND FOR MY -- TO KEEP MY BLOOD DOWN. AND I TOOK BAYER ASPIRIN FOR MY HEART BECAUSE I HAVE A BAD HEART, AND IT IS TO PREVENT ME FROM GETTING A HEART ATTACK UNTIL I GET MY PILLS WHEN I GET MY MEDICARE.

Q. OKAY. SO YOU HAVEN'T BEEN TAKING YOUR PRESCRIPTION FOR YOUR MENTAL DISORDER?

A. NO, SIR, BECAUSE I'M OUT OF THOSE. I HAVE NO MONEY TO PAY FOR IT.

Q. WHEN WAS THE LAST TIME YOU'VE TAKEN THAT MEDICATION?

A. THE LAST TIME I TOOK, BEFORE I MOVED OUT THAT DAY AT THAT HOUSE. THAT'S THE LAST ONE BECAUSE I HAVE TO TAKE THAT TWO TIMES IN THE DAY, THREE TIMES IN THE NIGHT.

Q. OKAY. SO YOU HAVEN'T TAKEN YOUR PRESCRIPTION MEDICATION FOR YOUR MENTAL DISORDER SINCE SEPTEMBER THE 12TH?
A. NO, SIR.
Q. NO, YOU HAVE NOT TAKEN IT?
A. NO, SIR.
MR. GULLEY: ALL RIGHT. THANK YOU. NOTHING FURTHER.
THE COURT: REDIRECT, MR. LINK.
MR. LINK: THANK YOU, YOUR HONOR.

REDIRECT EXAMINATION

BY MR. LINK:
Q. MR. GULLEY, STACY -- SINCE WE'RE ON A FIRST NAME BASIS NOW -- HE TALKED ABOUT A LOT ABOUT -- WE HAD A COUPLE CONVERSATIONS ON THE PHONE, CORRECT?
A. I DON'T REMEMBER.
Q. YOU DON'T REMEMBER. BUT AT ONE POINT, YOU CALLED ME BECAUSE YOU SAID THERE WAS AN INVESTIGATOR?
A. YES, SIR.
Q. RIGHT. AND I SAID IT WAS YOUR CHOICE TO TALK TO HIM, CORRECT?
A. YES, SIR.
Q. I DIDN'T TELL YOU NOT TO?
MR. GULLEY: OBJECTION, YOUR HONOR. LEADING. COUNSEL IS TESTIFYING.
THE COURT: OVERRULED.
BY MR. LINK:
Q. I NEVER TOLD YOU NOT TO SPEAK TO THE INVESTIGATOR?
A. NO, SIR.

Q. I SAID IT WAS YOUR CHOICE?
A. YES, SIR.
Q. YOU SAID YOU DIDN'T WANT TO TALK?
MR. GULLEY: OBJECTION.
THE COURT: ALL RIGHT. THIS IS LEADING.
MR. LINK: OKAY.
BY MR. LINK:
Q. DID YOU WANT TO TALK TO THE INVESTIGATOR?
A. NO, SIR.
Q. OKAY. DID YOU WANT TO TALK TO ME ABOUT THE CASE?
A. I DON'T KNOW, SIR. I DON'T KNOW WHO TO TALK TO ANYMORE. I DON'T -- YOU KNOW, I DON'T TRUST ANYBODY ELSE, YOU KNOW, THEY DO SOMETHING TO ME.
Q. OKAY. SO YOU DIDN'T WANT TO TALK TO THE DEFENSE INVESTIGATOR, CORRECT?
A. NO, SIR.
Q. YOU DIDN'T WANT TO TALK TO OUR PEOPLE EITHER?
MR. GULLEY: OBJECTION. MISSTATES THE TESTIMONY.
THE COURT: WELL, OVERRULED. IT IS A FAIR QUESTION AND ANSWER. YOU CAN FOLLOW-UP.
MR. LINK: OKAY.
BY MR. LINK:
Q. AND AS YOU SAID, WE NEVER TALKED ABOUT THE FACTS OF THIS CASE?
A. NO, SIR.
Q. WE TALKED LAST NIGHT, CORRECT?
A. YES.
THE COURT: JUST A YES IS FINE.

THE WITNESS: YES.

BY MR. LINK:

Q. DID WE TALK ABOUT THE FACTS OF THE CASE AT ALL?

A. NO, SIR.

Q. I JUST WANTED TO SEE HOW YOU WERE FEELING?

A. YES.

Q. WE'VE BEEN TALKING ABOUT MEDICATIONS YOU MAY OR MAY NOT BE TAKING. AT SOME POINT YOU HAD A BAD ACCIDENT?

A. YES, SIR.

Q. YOU BROKE YOUR BACK?

A. YES, SIR.

Q. AND SOME MEDICATION WAS PRESCRIBED FOR YOU?

A. YES, SIR.

Q. ALL RIGHT. YOU HAD MEDICATION FOR YOUR BACK PRESCRIBED?

A. YES, SIR. I GET THE SHOT, TOO.

Q. I'M SORRY? WHAT WAS THAT?

A. I GET THE SHOT, YOU KNOW.

Q. OH, SHOT. OKAY. AND THEN YOU HAD SOME MEDICATION PRESCRIBED FOR YOUR HEAD?

A. YES, SIR.

Q. AND THE HEAD MEDICATION, YOU HAVEN'T BEEN TAKING FOR A WHILE, CORRECT?

A. NO, SIR.

Q. OKAY. BUT YOU SEEM TO BE PRETTY CLEAR THINKING TODAY?

A. YES, SIR.

MR. GULLEY: OBJECTION.

THE COURT: JUST A MOMENT. THAT QUESTION IS NOT A QUESTION, AND, THEREFORE, IT'S STRICKEN, AND THE ANSWER IS STRICKEN.

MR. LINK: THANK YOU.

BY MR. LINK:

Q. ARE YOU THINKING CLEARLY TODAY, SIR?

A. YES, SIR.

Q. I JUST WANT TO CLARIFY THE ORDER OF HOW THINGS HAPPENED JUST ONE MORE TIME. AT SOME POINT DURING THAT DAY, THE FIRST CONTACT YOU HAD WITH MR. CUNNINGHAM, HE WAS NOT IN YOUR APARTMENT, CORRECT?

A. NO.

Q. ALL RIGHT. HE WAS IN THE PARKING LOT?

A. YES, SIR.

Q. AND WHAT WAS HE ASKING FOR?

A. VACUUM.

Q. OKAY. AND THEN YOU RETURNED THE VACUUM, CORRECT?

A. YES, SIR.

Q. AND, THEN, WHEN DID YOU SEE MR. CUNNINGHAM NEXT?

A. THE SECOND TIME I SAW HIM, HE ASKED ME WHERE HIS CELL PHONE -- "MY CELL PHONE IS MISSING."

Q. OKAY. AND HE WAS IN YOUR APARTMENT THAT SECOND TIME?

A. NO, SIR, HE WAS IN THE PARKING LOT AGAIN.

Q. THE PARKING LOT AGAIN. AND WHAT DID HE TELL YOU?

A. I SAID, "I DON'T KNOW ANYTHING ABOUT A CELL PHONE."

Q. AND THEN WHAT DID HE SAY?

A. HE SAID, "IF YOU DON'T GIVE ME MY CELL PHONE BACK, I'LL COME BACK AGAIN, AND I WANT TO GET MY CELL PHONE."

Q. OKAY. THEN HE CAME BACK A THIRD TIME, CORRECT?

A. YES, SIR.

Q. THIS TIME WITH THE SHOTGUN?

A. YES, SIR.

Q. DEFENSE ASKED YOU A QUESTION, YOU NEVER SAW CHRISTOPHER KNOX USING ANY TYPE OF DRUGS?

A. NO, SIR.

Q. WE ALSO TALKED ABOUT THE PLACE BEING DIRTY, FILTHY?

A. YES, SIR.

Q. ISN'T IT TRUE CHRISTOPHER AND REBECCA KNOX WERE IN THE PROCESS OF MOVING?

A. YES, SIR.

Q. MR. CUNNINGHAM ACCUSED YOU OF TAKING THE CELL PHONE, CORRECT?

A. YES, SIR.

Q. THREATENED TO KILL YOU?

A. YES, SIR.

Q. DID HE ACCUSE CHRISTOPHER KNOX OF TAKING THE CELL PHONE?

A. NO, SIR.

MR. LINK: THANK YOU. NOTHING FURTHER.

THE COURT: RECROSS, MR. GULLEY?

MR. GULLEY: YEAH.

RECROSS EXAMINATION

BY MR. GULLEY:

Q. PRIOR TO ACCUSING YOU OF TAKING THE CELL PHONE, HE ASKED WHO RETURNED THAT VACUUM, CORRECT?

A. YES, SIR.

Q. AND WHO PUT THAT VACUUM ON HIS PROPERTY, CORRECT?

A. YES, SIR.

Q. AND WHEN YOU TOLD US THE APARTMENT WAS FILTHY AND DIRTY, THAT WAS THE WHOLE TIME YOU WERE LIVING THERE, CORRECT?

A. YES, SIR.

Q. AND YOU WERE THE ONE WHO WOULD BE CLEANING IT UP?

A. YES, SIR.

Q. SO IT WASN'T JUST BECAUSE THEY WERE MOVING, IT WAS ALL THE TIME, RIGHT?

A. NO, SIR.

MR. GULLEY: THANK YOU. NOTHING FURTHER.

THE COURT: MR. LINK?

MR. LINK: NOTHING, YOUR HONOR.

THE COURT: OKAY. MR. CASTRO, YOU'RE ALL DONE TODAY. BEFORE YOU LEAVE, THERE'S ALWAYS A POSSIBILITY THAT YOU MAY GET CALLED BACK TO TESTIFY AGAIN, SO YOU REMAIN UNDER SUBPOENA. FOR NOW, YOU'RE FREE TO GO. THANK YOU FOR COMING.

THE WITNESS: THANK YOU, YOUR HONOR.

THE COURT: OKAY.

LADIES AND GENTLEMEN, WE'RE GOING TO TAKE OUR MORNING RECESS AT THIS TIME FOR 20 MINUTES. WE'LL RESUME AT, ACCORDING TO THE COURTROOM CLOCK, 10:55. THAT'S 20 MINUTES FROM NOW. PLEASE LEAVE YOUR NOTEBOOKS IN PLACE. DON'T FORM OR EXPRESS ANY OPINIONS ON THIS CASE. AND WE'LL BE READY TO GO IN 20 MINUTES. WE'LL BE IN RECESS UNTIL 10:55.

(RECESS.)

THE COURT: WE'RE BACK ON THE RECORD ON PEOPLE VERSUS CUNNINGHAM. ALL 14 JURORS, BOTH ATTORNEYS, AND THE DEFENDANT ARE PRESENT.

MR. LINK, YOU MAY CALL YOUR NEXT WITNESS.

MR. LINK: THANK YOU, YOUR HONOR. THE PEOPLE CALL REBECCA KNOX TO THE STAND.

REBECCA KNOX,

HAVING BEEN FIRST DULY ADMINISTERED AN OATH IN ACCORDANCE WITH CODE OF CIVIL PROCEDURE SECTION 2094, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. LINK:

Q. COULD YOU PLEASE STATE AND SPELL YOUR NAME FOR THE RECORD.

A. REBECCA KNOX, R-E-B-E-C-C-A K-N-O-X.

THE COURT: MS. KNOX, IT WOULD BE HELPFUL IF YOU COULD SCOOT YOUR CHAIR IN A LITTLE BIT FURTHER AND GET AS CLOSE AS YOU CAN TO THAT MICROPHONE. THANK YOU.

BY MR. LINK:

Q. MA'AM, I WANT TO ASK YOU SOME QUESTIONS ABOUT SEPTEMBER 12TH, 2004, LAST YEAR. WHERE WERE YOU LIVING AT THAT TIME?

A. AT 545 NORTH MOLLISON.

Q. WHO DID YOU LIVE WITH?

A. MY HUSBAND, CHRISTOPHER KNOX.

Q. WHAT WAS HIS NAME?

A. CHRISTOPHER KNOX.
Q. AND DID YOU LIVE WITH ANYBODY ELSE AT THAT TIME?
A. MY SON, AND WE HAD A COUPLE ROOMMATES.
Q. OKAY. DO YOU KNOW JOSE CASTRO?
A. YES.
Q. WAS HE LIVING THERE?
A. YES.
Q. HOW LONG HAD HE BEEN LIVING THERE?
A. A COUPLE MONTHS.
Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS PEOPLE'S 1 FOR IDENTIFICATION. IT APPEARS TO BE 6 PICTURES LABELED A THROUGH F. THERE'S A POINTER THERE IF YOU NEED TO USE IT. DO YOU RECOGNIZE THOSE SIX PICTURES AT ALL? TAKE YOUR TIME.
A. YES.
Q. AND HOW DO YOU RECOGNIZE THOSE PICTURES?
A. THE OUTSIDE AND THE INSIDE OF MY APARTMENT.
Q. OKAY. AND ARE THOSE SIX PICTURES FAIR AND ACCURATE REPRESENTATIONS OF WHAT YOUR APARTMENT LOOKS LIKE?
A. YES.
Q. OKAY. BUT WHEN YOU WERE LIVING THERE, THERE WERE OBVIOUSLY THINGS INSIDE OF IT?
A. YES.
Q. AND WAS IT DIRTY AT TIMES?
A. DIRTY AS IN WHAT?
Q. DIRTY AS IN CLOTHES ABOUT, THINGS STREWN ABOUT?
A. I GUESS, YES.
Q. OKAY. YOU WERE LIVING THERE ON SEPTEMBER 12TH,

CORRECT?

A. YES.

Q. DID YOU SHARE A ROOM WITH MR. KNOX?

A. YES.

Q. AND DID JOSE CASTRO HAVE HIS OWN ROOM?

A. HE WAS IN THE LIVING ROOM.

Q. EXCUSE ME?

A. IN THE LIVING ROOM.

Q. OKAY. ON SEPTEMBER 12TH, DID ANYTHING UNUSUAL HAPPEN?

A. YES.

Q. COULD YOU PLEASE DESCRIBE WHAT HAPPENED THAT DAY.

A. I CAME HOME THAT EVENING, AND MY HUSBAND AND JOSE HAD TOLD ME ABOUT AN INCIDENT WITH THE NEIGHBOR.

Q. OKAY. AND DO YOU KNOW WHAT THAT INCIDENT WAS INVOLVING?

A. IT WAS OVER A CELL PHONE BEING SUPPOSEDLY STOLEN OFF THE PATIO.

Q. DO YOU KNOW ROUGHLY WHAT TIME THIS WAS?

A. MAYBE 6, 7 O'CLOCK. I'M NOT SURE.

Q. OKAY. THEY TOLD YOU ABOUT AN INCIDENT WITH A CELL PHONE INVOLVING A NEIGHBOR, CORRECT?

A. YES.

Q. DID THEY SPECIFY WHICH NEIGHBOR?

A. YES.

Q. WHO?

A. JAMES.

Q. JAMES WHO?

A. CUNNINGHAM.
Q. DO YOU SEE HIM IN COURT TODAY?
A. YES.
Q. COULD YOU PLEASE POINT TO WHERE HE'S SITTING AND IDENTIFY AN ARTICLE OF CLOTHING THAT HE'S WEARING?
A. RIGHT THERE, BLUE LONG-SLEEVED SHIRT.
MR. LINK: IDENTIFYING THE DEFENDANT?
THE COURT: YES.
MR. LINK: THANK YOU.
BY MR. LINK:
Q. WHAT DID YOU KNOW ABOUT THE INCIDENT?
A. I WAS TOLD THAT I WAS ABLE TO --
MR. GULLEY: OBJECTION.
THE COURT: JUST A MOMENT. SUSTAINED.
BY MR. LINK:
Q. ONCE YOU HEARD ABOUT THIS INCIDENT, WHAT HAPPENED NEXT?
A. WELL, I WAS IN MY LIVING ROOM, AND JAMES HAD COME UPSTAIRS AFTER I HAD HEARD ABOUT AN INCIDENT BETWEEN THEM. HE CAME THROUGH THE FRONT DOOR AND HAD STARTED YELLING AT JOSE.
Q. WHAT WAS HE YELLING?
A. THAT HE HAD STOLEN A CELL PHONE OFF HIS PATIO WHEN HE WENT TO RETURN THE VACUUM.
Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS PEOPLE'S 2 TO HELP BETTER IDENTIFY THE AREA. THAT APPEARS TO BE A NOT TO SCALE MODEL OF AN APARTMENT. IS THAT A FAIR AND ACCURATE REPRESENTATION OF WHAT THE APARTMENT LAYOUT WAS?

A. YES.

Q. OKAY. AND CAN YOU PUT A -- CAN YOU MARK WHERE YOUR BEDROOM IS IN THIS PLACE. OKAY. GO AHEAD AND PUT A -- GO AHEAD AND PUT "BEDROOM," PUT "BR." OKAY. AND THAT'S YOUR'S AND CHRISTOPHER'S?

A. YES.

Q. COULD YOU PLEASE PUT "KNOX" ABOVE THAT. ALL RIGHT. WHERE IS THE LIVING ROOM?

A. RIGHT HERE.

Q. PUT "LIVING," PLEASE. AND YOU CAN GO AHEAD AND HAVE A SEAT. THANK YOU.

YOU SAID THE DEFENDANT, MR. CUNNINGHAM, ENTERED YOUR HOUSE -- APARTMENT, CORRECT?

A. YES.

Q. WHERE DID HE ENTER FROM?

A. THROUGH THE FRONT DOOR RIGHT HERE.

Q. OKAY. WHERE WAS HE STANDING?

A. WHERE WAS THE DEFENDANT STANDING?

Q. CORRECT.

A. WELL, MY FRONT DOOR WAS OPENED, SO HE WALKED IN AND HE WAS ABOUT RIGHT IN HERE, LIKE RIGHT THROUGH THE DOOR.

Q. HE WAS INSIDE YOUR LIVING ROOM?

A. YES.

Q. WHERE WAS JOSE CASTRO, IF YOU CAN REMEMBER?

A. HE WAS OVER HERE IN THE BLUE CHAIR IN THE CORNER.

MR. LINK: OKAY. THANK YOU. FOR THE RECORD, SHE IS POINTING TO THE BOTTOM LEFT-HAND OF THE LIVING ROOM.

//

BY MR. LINK:

Q. AND WHERE WERE YOU?

A. I WAS RIGHT AT THE WALL IN THE KITCHEN AND THE LIVING ROOM.

Q. OKAY. WHAT HAPPENED?

A. HE ENTERED YELLING AT JOSE ABOUT A CELL PHONE BEING STOLEN. HE HAD A GUN AT THE SIDE OF HIS -- LIKE DOWN BY HIS RIGHT LEG.

Q. CAN YOU DESCRIBE THE GUN, IF YOU CAN REMEMBER?

A. JUST LONG, BROWN, BLACK. I DON'T KNOW WHAT KIND.

Q. ALL RIGHT. HE WALKED IN WITH A GUN ON HIS SIDE. WHAT HAPPENED?

A. HE JUST CONTINUED YELLING ABOUT THE PHONE. AND JOSE, AT THAT TIME, WAS YELLING BACK SAYING THAT HE DIDN'T TAKE NO PHONE, AND HE HAD WENT -- JOSE KIND OF LIKE RAN BEHIND ME TO GO TOWARDS THE PHONE, WHICH WAS ON THE FLOOR, GOING TOWARDS THE BEDROOM.

Q. WHICH PHONE WAS THIS?

A. THE HOUSE PHONE, CORDLESS PHONE.

Q. WHAT HAPPENED NEXT?

A. THEY CONTINUED YELLING BACK AND FORTH. AND JOSE HAD MADE IT AROUND ME. I BELIEVE, AT THAT TIME THAT'S WHEN HE WENT TO PICK THE PHONE UP, AND HE HAD PUT THE PHONE TO -- OR HE HAD PUT THE GUN TO HIS NECK.

Q. YOU'RE USING A LOT OF HE'S AND HE'S, AND WE HAVE TWO MEN HERE IN THIS SITUATION.

A. ALL RIGHT.

Q. DESCRIBING NAMES, WHAT HAPPENED NEXT?

A. JAMES HAD PUT THE GUN TO JOSE'S NECK.
Q. WAS HE SAYING ANYTHING?
A. JUST -- THEY WERE BOTH YELLING BACK AND FORTH, YOU KNOW. JAMES WANTED THE PHONE RETURNED. HE WAS GOING TO KILL HIM. JOSE WAS YELLING THAT HE DIDN'T STEAL THE PHONE.
Q. OKAY. WHAT HAPPENED NEXT?
A. HE HAD, LIKE, COCKED THE GUN, OR WHATEVER, AND PUT IT TO HIS NECK.
Q. HOW CLOSE TO MR. CASTRO'S NECK DID THE DEFENDANT PLACE THE GUN?
A. ON HIS NECK.
Q. ON HIS NECK?
A. YES.
Q. OKAY. AND HOW FAR AWAY WERE YOU FROM THIS SITUATION?
A. 1 TO 2 FEET MAYBE.
Q. WHAT HAPPENED NEXT?
A. AFTER HE PUT IT TO HIS NECK, HE HAD PUSHED HIM WITH THE GUN STILL ON HIM, AND HE WENT ABOUT MAYBE 2 TO 3 FEET, JOSE DID.
Q. JOSE WENT 2 TO 3 FEET WHERE?
A. LIKE FLYING BACKWARDS.
Q. DID MR. CASTRO, JOSE, FALL DOWN?
A. YES.
Q. WHAT HAPPENED NEX?
A. HE REACHED FOR THE PHONE, AND JAMES HAD TAKEN IT FROM HIM AND THREW IT INTO THE HALLWAY.
Q. AT THAT POINT, DID YOU THINK MR. CUNNINGHAM WAS

GOING TO SHOOT MR. CASTRO?

MR. GULLEY: OBJECTION.

MR. LINK: IT'S WHAT SHE PERCEIVED, YOUR HONOR.

THE COURT: OVERRULED. YOU CAN ANSWER.

THE WITNESS: YES.

BY MR. LINK:

Q. WERE YOU SCARED?

A. YES.

Q. WHAT HAPPENED NEXT?

A. MY HUSBAND HAD CAME AROUND THE CORNER OUT FROM OUR BEDROOM.

Q. OKAY.

A. AND WAS YELLING WORDS BACK AND FORTH.

Q. WITH WHO?

A. JAMES.

Q. OKAY. AND AT THAT POINT, DID YOUR HUSBAND, CHRISTOPHER KNOX, HAVE ANYTHING IN HIS HAND?

A. HE WENT IN THE ROOM AND HE HAD A BAT.

Q. OKAY. SO IS IT FAIR TO SAY -- AND I DON'T WANT TO PUT WORDS IN YOUR MOUTH -- HE CAME OUT AND SAW THE SITUATION AND WENT BACK AND GOT A BAT?

A. RIGHT.

Q. AND HE WAS ANGRY?

A. YES.

Q. AND HE WAS YELLING AT MR. CUNNINGHAM?

A. YEAH, TO GET OUT OF THE HOUSE.

Q. A LOT OF PROFANITY WAS BEING USED?

A. YES.

Q. WHAT WERE YOU DOING?
A. YELLING BASICALLY THE SAME THING, YOU KNOW, TO GET OUT OF THE HOUSE. AT THAT TIME, MY HUSBAND HAD PICKED UP THE PHONE AND HAD CALLED 911.
Q. WHAT HAPPENED NEXT?
A. I ENDED UP TAKING THE PHONE FROM MY HUSBAND.
Q. ON THE 911 CALL?
A. YES.
Q. WHAT HAPPENED?
A. THEY JUST ASKED ME FOR A DESCRIPTION OF JAMES AND IF HE WAS STILL THERE ON THE PROPERTY.
Q. WHAT WAS YOUR STATE OF MIND LIKE AT THE TIME YOU WERE MAKING THE CALL?
A. SHOCKED, SCARED.
Q. OKAY. WERE YOU USING PROFANITY ON THE PHONE AS WELL POSSIBLY?
A. POSSIBLY.
Q. YOU DON'T REMEMBER NECESSARILY?
A. I DON'T REMEMBER.
Q. WHEN YOU WERE ON THE PHONE MAKING THE 911 CALL, WHERE DID MR. CUNNINGHAM GO?
A. BY THE TIME I HAD TAKEN THE PHONE, I DIDN'T SEE HIM ACTUALLY GO OUT OF THE APARTMENT. OBVIOUSLY HE HAD LEFT THE APARTMENT. I DIDN'T SEE WHICH WAY HE HAD WENT OR ANYTHING.
Q. SO WHAT HAPPENED NEXT?
A. THEY ASKED ME TO LOOK AND SEE IF HIS VEHICLE WAS STILL THERE, AND I DIDN'T SEE IT. AND THEY SAID THEY HAD JUST GOTTEN ANOTHER CALL THAT HE WAS ON THE FREEWAY, SO --

Q. OKAY. LET'S STOP THERE. AFTER YOU MADE THE CALL, YOU CHECKED FOR MR. CUNNINGHAM'S TRUCK. WHAT HAPPENED NEXT?

A. WE MET THE POLICE DOWNSTAIRS.

Q. AND THEY TOOK YOUR STATEMENTS?

A. YES.

MR. LINK: YOUR HONOR, AT THIS TIME, I WOULD LIKE TO PLAY THE 911 TAPE. I'LL HAND OUT THE TRANSCRIPTS, TOO.

THE COURT: GIVE THE TRANSCRIPTS TO THE BAILIFF, IF YOU WOULD. AND BEFORE THEY'RE HANDED OUT, DO YOU WISH TO BE HEARD, MR. GULLEY?

MR. GULLEY: YES, YOUR HONOR.

(SIDEBAR CONFERENCE, NOT REPORTED.)

THE COURT: HERE'S WHAT'S GOING TO HAPPEN. THE ATTORNEYS -- OR MR. LINK IS GOING TO PLAY A 911 TAPE FOR YOU. A SECRETARY IN HIS OFFICE, OR SOME OTHER TYPE OF TRANSCRIBER, HAS PREVIOUSLY LISTENED TO THAT TAPE AND HAS TO THE BEST OF HIS OR HER ABILITY PREPARED A TRANSCRIPT OF IT.

NOW, THE TRANSCRIPT IS GOING TO BE HANDED OUT TO YOU SO THAT YOU CAN FOLLOW ALONG WHILE YOU LISTEN TO THE TAPE BECAUSE AS WITH ANY TAPE, THINGS ARE SOMETIMES SAID VERY QUICKLY. AND BOTH OF THE ATTORNEYS HAVE PREVIOUSLY HEARD THE TAPE, REVIEWED THE TRANSCRIPT, AND THEY BELIEVE IT'S ACCURATE. SO IT'S REALLY GOING TO BE JUST AN AID FOR YOU TO FOLLOW ALONG.

NOW, THE DISTINCTION IS THIS. WHAT YOU HEAR ON THE TAPE IS EVIDENCE. WHAT YOU READ ON THE TRANSCRIPT IS NOT NECESSARILY EVIDENCE BECAUSE IT'S JUST SOMEBODY ELSE'S OPINION OF WHAT'S ON THE TAPE. SO THE TAPE WILL ULTIMATELY

BE INTRODUCED INTO EVIDENCE AND WILL BE EVIDENCE, BUT NOT THE TRANSCRIPT. IT'S JUST AN AID.

THE TRANSCRIPT IS GOING TO BE NOW HANDED OUT. I WOULD ASK THAT YOU NOT START READING IT. JUST TURN IT OVER UNTIL THE TAPE ACTUALLY STARTS, AND THEN YOU CAN START READING IT ALONG WITH THE TAPE.

ALL RIGHT. MR. LINK.

MR. LINK: THANK YOU.

THE COURT: AND, ACTUALLY, THE ATTORNEY IS GOING TO PLAY THE FIRST FEW SECONDS OF THE TAPE JUST TO MAKE SURE THAT MS. KNOX RECOGNIZES THE VOICES ON THE TAPE, AND THEN YOU'LL HEAR THE BALANCE OF IT. AS SOON AS HE TURNS IT ON, YOU'RE FREE TO TURN OVER THE TRANSCRIPT AND START READING. AND THE COURT REPORTER IS NOT EXPECTED TO REPORT WHAT'S ON THE TAPE. SHE CAN STOP.

(A PORTION OF PEOPLE'S EXHIBIT 7 WAS PLAYED, NOT REPORTED.)

BY MR. LINK:

Q. DID YOU RECOGNIZE THAT VOICE?

A. MY HUSBAND.

(A FURTHER PORTION OF PEOPLE'S EXHIBIT 7 WAS PLAYED, NOT REPORTED.)

BY MR. LINK:

Q. DO YOU RECOGNIZE THAT VOICE?

A. MINE.

(A FURTHER PORTION OF PEOPLE'S EXHIBIT 7 WAS PLAYED, NOT REPORTED.)

THE COURT: ALL RIGHT. IF THE JURORS WOULD PLEASE

PASS THE TRANSCRIPT TO THEIR RIGHT ALL THE WAY, AND THE BAILIFF WILL COLLECT THEM.

BY MR. LINK:

Q. IS THAT THE FIRST TIME THAT YOU'VE HEARD THAT 911 TAPE?

A. YES.

Q. I'VE NEVER PLAYED THAT FOR YOU BEFORE, CORRECT?

A. NO.

Q. I'VE NEVER SHOWN YOU ANY OF YOUR HANDWRITTEN STATEMENTS?

A. NO.

Q. I'M SHOWING YOU WHAT'S BEEN MARKED AS PEOPLE'S EXHIBIT NUMBER 3.

(PEOPLE'S EXHIBIT 3, STEVENS MODEL 820B SAWED-OFF SHOTGUN, MARKED FOR IDENTIFICATION.)

MR. LINK: DOES YOUR HONOR WANT TO TELL THE JURY THAT IT'S SAFE?

THE COURT: DEPUTY WAITE, HAVE YOU HAD AN OPPORTUNITY TO EXAMINE THE WEAPON AND DETERMINE THAT IT IS NOT IN A FIRING POSITION AND IT IS SAFE?

THE BAILIFF: YES, YOUR HONOR. THAT'S ALL CORRECT.

THE COURT: OKAY. AND THE BAILIFF IS IN CHARGE OF ANY GUNS THAT COME INTO THE COURTROOM. AND I DO WISH TO ASSURE THE JURORS THAT HE HAS EXAMINED ANY AND ALL WEAPONS THAT ARE BROUGHT IN. THEY HAVE WHAT IS CALLED TRIGGER LOCKS.

THE BAILIFF: ZIP TIES, YOUR HONOR.

THE COURT: AND THEY ARE SAFE, AND THERE'S TO BE NO CONCERNS ABOUT THEM. ALL RIGHT.

MR. LINK: THANK YOU.

BY MR. LINK:

Q. I'M SHOWING YOU, AS I SAID, WHAT'S BEEN MARKED AS PEOPLE'S 3. I'VE SHOWN IT TO DEFENSE COUNSEL. I KNOW THIS HAS HAPPENED A LONG TIME AGO. I'VE NEVER SHOWN YOU ANY GUNS, RIGHT?

A. NO.

Q. ALL RIGHT. DO YOU RECOGNIZE THIS PARTICULAR GUN?

A. IT LOOKS LIKE IT, YES.

Q. IT LOOKS LIKE WHAT?

A. THE GUN THAT WAS IN JAMES' HAND THAT NIGHT.

MR. LINK: AND JUST FOR THE RECORD, THE HANDLE IS IN THREE SEPARATE PIECES, AND I WAS HOLDING THAT TOGETHER WITH MY LEFT HAND.

BY MR. LINK:

Q. WERE YOU IN THE PROCESS OF MOVING THE DAY THIS INCIDENT OCCURRED?

A. YES.

Q. WERE YOU EVICTED FROM THAT APARTMENT?

A. YES.

Q. FOR NOT PAYING RENT?

A. YES.

MR. GULLEY: OBJECTION. LEADING. WITHDRAW.

THE COURT: ALL RIGHT.

BY MR. LINK:

Q. YOU SAID YES?

A. YES.

Q. HAD YOU PERSONALLY HAD ANY PROBLEMS WITH